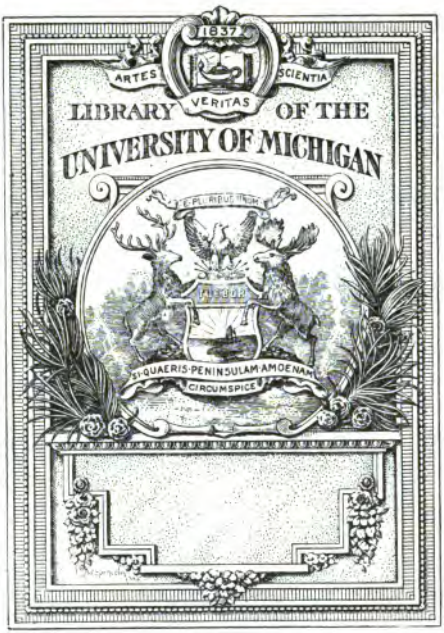

THE

GRAND ARMY

BLUE-BOOK:

CONTAINING THE

RULES AND REGULATIONS

OF THE

GRAND ARMY OF THE REPUBLIC,

AND

OFFICIAL DECISIONS AND OPINIONS THEREON.

REVISED EDITION,

1891.

PHILADELPHIA:
PRINTED BY J. B. LIPPINCOTT COMPANY.
1891.

THE

GRAND ARMY BLUE-BOOK.

THE GRAND ARMY BLUE-BOOK was first compiled and issued by Past Commander-in-Chief Robert B. Beath, in 1884, its purpose being to bring together for handy reference the Rules and Regulations and all Decisions or Opinions bearing thereon. It was officially accepted as authority upon all matters passed upon and reported to the National Encampment by the Commanders-in-Chief and Judge-Advocates-General.

In 1886 the following resolution, presented by Judge-Advocate-General C. H. Grosvenor, was unanimously adopted by the National Encampment:

Resolved, That this National Encampment, actuated by a desire for uniformity of rulings and decisions upon the Laws, Rules, and Regulations of the Grand Army of the Republic, does hereby endorse the BLUE-BOOK compiled and written by Past Commander-in-Chief R. B. Beath as a standard and authoritative book of reference and authority, and Comrade Beath is requested to continue the revision of his work from time to time to correspond with the new Decisions of the National Encampment and the changes of the Rules and Regulations.

Several editions followed, and the publication was then transferred to National Head-quarters. No edition had been printed for the year 1889, and the National Encampment at Boston, 1890, directed the appointment of a committee to prepare a complete Digest up to that date, to be printed when approved by the Commander-in-Chief.

Under this resolution the undersigned were appointed as such committee. In this compilation the same general form has been followed, but all subsequent Decisions and Opinions have been

brought forward to their proper position in the text of the Rules and Regulations.

Decisions and Opinions rendered null and void by subsequent legislation have been omitted, except in a few instances where the Opinions contained statements of such general interest that it seemed wise to retain them, with the explanation appended that they are now inoperative.

ROBERT B. BEATH,
S. S. BURDETT,
HENRY E. TAINTOR,
Committee.

At the National Encampment in Boston, 1890, Judge-Advocate-General D. R. Austin called attention to the need of a concise form for the government of courts-martial, which had been for some time under consideration through previous recommendations on that subject.

The Encampment authorized the appointment of a committee to prepare such a code, to be published in connection with the BLUE-BOOK. (*Journal*, 1890, page 256.)

The Commander-in-Chief appointed the undersigned as such committee, and he having duly approved their report as provided in the resolution, the same is hereto appended, pages 241–250.

D. R. AUSTIN,
JOS. W. O'NEALL,
HENRY M. DUFFIELD,
Committee.

Approved:
WHEELOCK G. VEAZEY,
Commander-in-Chief.

Official:
J. H. GOULDING,
Adjutant-General.

PREFACE.

THE first Post of the Grand Army of the Republic was organized at Decatur, Illinois, April 6, 1866, by Dr. B. F. Stephenson, of Springfield.

This was followed by the formation of Post No. 2, at Springfield, and Posts were thereafter rapidly established throughout Illinois and in the States of Wisconsin, Indiana, Ohio, Iowa, and Missouri.

A Department Convention was held at Springfield on July 12, 1866, and General John M. Palmer was elected Department Commander.

The following resolution was adopted by the Encampment:

WHEREAS, We, the members of the Grand Army of the Republic, recognize in Major B. F. Stephenson, of Springfield, Illinois, the head and front of the organization; be it therefore

Resolved, That for the energy, loyalty, and perseverance manifested in organizing the Grand Army of the Republic he is entitled to the gratitude of all loyal men, and that we, as soldiers, tender him our thanks, and pledge him our friendships at all times and under all circumstances.

Dr. Stephenson assumed charge of the organization of Posts in other States, and issued orders as Commander-in-Chief.

On October 31, 1866, he issued a call for a National Convention of the Grand Army of the Republic, which was held in Indianapolis, November 20, with representatives present from Illinois, Missouri, Kansas, Wisconsin, New York, Pennsylvania, Ohio, Iowa, Kentucky, Indiana, and the District of Columbia.

General John M. Palmer, of Illinois, presided, General Stephen A. Hurlbut, of Illinois, was elected Commander-in-Chief, and Dr. Stephenson, Adjutant-General.

The Committee on "Work and Ritual" was composed of Comrades F. T. Ledergerber, Missouri; J. L. Wilson, Indiana; B. F. Stephenson, Illinois; Clayton McMichael, Pennsylvania;

William Vandever, Iowa; H. K. Millward, Kentucky; Charles G. Mayers, Wisconsin; and J. L. Greene, Ohio.

The Rules and Regulations then issued contained a Preamble and twenty-three Articles. These were headed: 1. Title. 2. Objects. 3. Organization. 4. Members (Eligibility). 5. Elections of Members. 6. Impeachment of Members. 7. Death of Members. 8. Officers of Posts, Department and National Encampment. 9. Duties of Officers. 10. Meetings. 11. Secrecy. 12. Dues and Revenue. 13. Arrearages. 14. Reports. 15. Charters. 16. Election of Officers. 17. Departments. 18. National Encampment. 19. Bonds. 20. Transfers and Travelling Cards. 21. Provisional Government of Departments. 22. By-Laws. 23. Alterations and Amendments.

The Second National Encampment, which met in the Council Chambers, Independence Hall, Philadelphia, January 15, 1868, made but slight changes in the Rules and Regulations. General John A. Logan was then elected Commander-in-Chief, and N. P. Chipman, Adjutant-General.

The National Council of Administration, which met in New York City, October 1, 1868, to consider principally the matter of adopting a design for a membership badge, recommended the appointment of a committee "to revise the Rules, Regulations, and Ritual, to consider the subject of degrees, to recommend a uniform for the Grand Army of the Republic, and to report at the next meeting of the National Encampment."

Commander-in-Chief Logan announced as such committee: Comrades James Shaw, Jr., Rhode Island; Louis Wagner, Pennsylvania; Rev. A. H. Quint, Massachusetts; O. M. Wilson, Indiana; T. W. Higginson, Rhode Island; Thomas L. Young, Ohio; and F. W. Sparling, Tennessee.

Comrades generally were invited "to furnish such suggestions as may, in any manner, aid the committee in making our Ritual, Rules and Regulations worthy of our organization." Comrade W. W. Douglas, Providence, Rhode Island, was appointed secretary of the committee. The report of the committee was presented to the Encampment at Cincinnati, May 12, 1869, and, with slight amendment, was then adopted.

At this time the Order was languishing. The general belief

that it was a secret political society had a depressing effect upon recruiting. It was thought that the Ritual could be made more attractive, thereby increasing the interest in Post meetings and adding to the strength and influence of the organization. The Rules and Regulations, as arranged by this committee, were divided into Articles and Chapters as at present, with an article (5) in Chapter 1, providing for three grades of membership: *First.* Recruit. *Second.* Soldier. *Third.* Veteran.

Members of the First Grade were not eligible to office, nor privileged to speak or vote in the Post meetings. They could only be advanced to the Second Grade at the expiration of two months after muster as Recruit. Meetings of the Post were held in the Second Grade; but the positions of Commander, Vice-Commanders, Adjutant, Quartermaster, Surgeon, Chaplain, Officer of the Day, and Officer of the Guard could only be held by members of the Third Grade. Members of the Second Grade could not be present at meetings held for advancement to the Third Grade.

A member of the Second Grade was only eligible to advancement to the Third or Veteran Grade at the expiration of six months from his muster as Soldier.

The Encampment adopted a series of Rules to "put in operation the system of Grades," which were published in G. O., No. 3, dated Washington, June 3, 1869. These provided:

First. That the following shall be eligible to the Third Grade upon their taking the several obligations:

All present and past officers of the National Encampment and of the several Department Encampments; all present and past Commanders, Vice-Commanders, Adjutants, Quartermasters, Surgeons, and Chaplains of Posts, together with all members of the Grand Army of the Republic who shall have been members eight months; *provided*, that they shall be in good standing in their respective Posts and Departments, and free from all dues on the first of July, 1869; *and provided*, they take the several obligations prior to the first day of September, 1869.

Second. Provided, that comrades who have been members two months shall constitute the Second Grade on taking the obligations, etc.

Third. All recruits received on and after July 1, 1869, shall constitute the First Grade.

The members of the National Encampment present were at

that time obligated, and provision was made for the obligation of officers of Departments not present.

The system was in force two years, and during that time hundreds of Posts and thousands of members were lost to the Order because of their refusal to submit to the requirements of this reorganization. The system of Grades or Degrees was abolished by the Encampment at Boston, May 10, 1871, by striking from the Rules and Regulations all reference thereto. A new Ritual was adopted, which, in anticipation of such action, had been prepared by Comrade C. K. Fox, of Massachusetts.

No material changes have since been made in the Ritual except the addition of instructions for officers, made during Commander-in-Chief Wagner's administration, and the Badge presentation, which was written by Chaplain-in-Chief Lovering, based on one written by Comrades George B. Squires and E. A. Perry, of Brooklyn, for Post No. 10 of that city.

Changes in the Rules and Regulations since the Encampment of 1869 (excepting as to Grades) have been made, mainly to cover points referred to National Head-quarters for decision.

In accordance with the action of the National Encampment in 1875, Judge-Advocate-General W. W. Douglas prepared a Digest of Opinions, which was issued for the information of the Order in 1876, and in May, 1877, he prepared for publication all the Opinions of Judge-Advocates-General up to that date.

This was followed, in 1879, by the issue of the MANUAL, compiled by Comrade R. B. Beath, which has been replaced by the BLUE-BOOK.

The Encampment at Baltimore, in 1882, directed a compilation to be made of the Opinions of Judge-Advocates-General up to that time, and this work was assigned to Judge-Advocate-General Carnahan, who reported to the Encampment at Denver: "I have performed this work in accordance with the order of the last National Encampment in so far as the preparation of a syllabus was ordered; but, believing that a syllabus alone would not meet the needs of the Grand Army, I collected all the Decisions of my predecessors, that the comrades might not only have the outline, but the full text of the Opinions and Decisions which are now a part of the laws governing the Grand Army."

The committee upon the report of Judge-Advocate-General Carnahan reported, "that after a careful examination of said report and the Digest of Opinions accompanying the same, they cordially recommend that said Digest of Opinions be accepted and approved as the law of the Grand Army of the Republic upon the subjects therein treated. In the opinion of the committee, the compilation is one of learning, research, and ability, bringing the common law of our organization in a palpable and comprehensible form before our comrades, and gathering together and formulating rules for the determination of questions which may arise hereafter, which will be invaluable to the Order by reason of their simplicity, directness, and accessibility."

It became necessary to reprint these Opinions during the year following, and Comrade Carnahan, though not then in office in the National Encampment, was requested by the Commander-in-Chief to take charge of the work, and make such changes as his experience suggested.

Accordingly, under his supervision all the Opinions in force were collated, and numbered in the reprint, 1, July 1, 1871, to 145, April, 1883, with Decisions made by Commanders-in-Chief Wagner and Merrill, and numbered therein 1 to 19. This numbering of Opinions and Decisions, with the syllabus as prepared by Comrade Carnahan, is followed in this work.

The Opinions were as follows:

Comrade N. P. Chipman, Potomac, appointed Judge-Advocate-General, May, 1869. Opinions 1, 2.

Comrade W. W. Douglas, Rhode Island, appointed July, 1871. Opinions 3–73.

Comrade William Coggswell, Massachusetts, appointed May, 1877. Opinions 74–103.

Comrade W. W. Baldwin, Ohio, appointed May, 1879. Opinions 104–123.

Comrade George B. Squires, New York, appointed June, 1880. Opinions 124–130.

Comrade James R. Carnahan, Indiana, appointed July, 1882. Opinions 131–145.

The Decisions and Opinions issued subsequent to the publication of Carnahan's DIGEST are herein numbered as reported to

the different sessions of the National Encampment, with the initials appended of the Commander-in-Chief and Judge-Advocate-General.

The following comrades have since served as Judge-Advocates-General:

Comrade William Vandever, Iowa, appointed July, 1883.

Comrade D. R. Austin, Ohio, appointed June, 1884.

Comrade C. H. Grosvenor, Ohio, appointed July, 1885.

Comrade H. E. Taintor, Connecticut, appointed September, 1886.

Comrade Wheelock G. Veazey, Vermont, appointed September, 1887.

Comrade J. B. Johnson, Kansas, appointed 1888.

Comrade D. R. Austin, Ohio, appointed 1889.

Comrade William Lochren, Minnesota, appointed 1890.

Annual sessions of the National Encampment have been held, and comrades elected Commanders-in-Chief, as follows:

1. Indianapolis, November 20, 1866. S. A. Hurlbut, Illinois.
2. Philadelphia, January 15, 1868. John A. Logan, Illinois.
3. Cincinnati, May 12, 1869. John A. Logan, Illinois.
4. Washington, May 11, 1870. John A. Logan, Illinois.
5. Boston, May 10, 1871. A. E. Burnside, Rhode Island.
6. Cleveland, May 8, 1872. A. E. Burnside, Rhode Island.
7. New Haven, May 14, 1873. Charles Devens, Jr., Massachusetts.
8. Harrisburg, May 13, 1874. Charles Devens, Jr., Massachusetts.
9. Chicago, May 12, 1875. John F. Hartranft, Pennsylvania.
10. Philadelphia, June 30, 1876. John F. Hartranft, Pennsylvania.
11. Providence, June 26, 1877. John C. Robinson, New York.
12. Springfield, Massachusetts, June 4, 1878. John C. Robinson, New York.
13. Albany, June 17, 1879. William Earnshaw, Ohio.
14. Dayton, June 8, 1880. Louis Wagner, Pennsylvania.
15. Indianapolis, June 15, 1881. George S. Merrill, Massachusetts.

16. Baltimore, June 21, 1882. Paul Van Dervoort, Nebraska.
17. Denver, July 25, 1883. Robert B. Beath, Pennsylvania.
18. Minneapolis, July 23, 1884. John S. Kountz, Ohio.
19. Portland, Maine, June 24, 1885. S. S. Burdett, Washington, District of Columbia.
20. San Francisco, August 4, 1886. Lucius Fairchild, Wisconsin.
21. St. Louis, September 29, 1887. John P. Rea, Minnesota.
22. Columbus, September 12, 1888. William Warner, Missouri.
23. Milwaukee, August 28, 1889. Russell A. Alger, Michigan.
24. Boston, August 13, 1890. Wheelock G. Veazey, Vermont.

RULES AND REGULATIONS

OF THE

GRAND ARMY OF THE REPUBLIC.

PREAMBLE.

1 WE, the soldiers and sailors, and honorably discharged soldiers and sailors, of the Army, Navy, and Marine Corps of the United States, who have consented to this Union, having aided in maintaining the honor, integrity, and supremacy of the National Government during the late rebellion, do unite to establish a permanent association for the objects hereinafter set forth; and through our National Encampment do ordain and establish the following Rules and Regulations for the government of this association.

CHAPTER I.

ARTICLE 1.

2 TITLE.

This association shall be known as the GRAND ARMY OF THE REPUBLIC.

ARTICLE 2.

3* OBJECTS.

The objects to be accomplished by this organization are as follows:

NOTE.—The asterisk following the number of paragraph shows that there are either explanatory notes or Decisions immediately following upon that section. The small figures embraced in the text refer particularly to the Decisions upon that paragraph in the section.

3[1] NOTE.—In the Rules and Regulations in use prior to May, 1869, Article 2 contained the following:

To establish and secure the rights of these defenders of their country by all moral, social, and political means in our control.

[Chapter 1.—Article 2.]

4 Fraternity.

1. To preserve and strengthen those kind and fraternal feelings which bind together the soldiers, sailors, and marines who united to suppress the late rebellion, and to perpetuate the memory and history of the dead.

5 Charity.

2. To assist such former comrades in arms as need help and protection, and to extend needful aid to the widows and orphans of those who have fallen.

6 Loyalty.

3. To maintain true allegiance to the United States of America, based upon a paramount respect for, and fidelity to, its Constitution and laws, to discountenance whatever tends to weaken loyalty, *incites to insurrection, treason, or rebellion*, or in any manner impairs the efficiency and permanency of our free institutions; and to encourage the spread of universal liberty, equal rights, and justice to all men.

Note 3[2] continued.

To inculcate upon the whole country a proper appreciation of their services and a recognition of their just claims.

But this association does not design to make nominations for office or to use its influence as a secret organization for partisan purposes.

This section was omitted in the new Rules adopted 1869. Article 11, Chapter 5, was substituted.

8[2] OPINION 140. J. R. C. October 16, 1882.

Members of the Grand Army of the Republic and ex-rebel soldiers cannot be placed on the same footing.

Funds cannot be used for the support of ex-rebel soldiers.

Can the Grand Army of the Republic, or any Department or Post thereof, consistently with the principles of the Order, aid in establishing or maintaining a Veteran Home to which Mexican war veterans, who served in the rebel army or navy, can be admitted to equal rights with Union soldiers?

The Grand Army of the Republic was organized for soldiers, sailors, and marines who united to suppress the late rebellion.

To assist such *former comrades* as need help and protection.

To discountenance whatever tends to weaken loyalty.

The Grand Army of the Republic offers a premium to disloyalty whenever it, as an Order, undertakes to provide for the maintenance of men who served in the rebel army.

No person is eligible to membership who at any time bore arms against the

United States. (Chapter 1, Article 4.) If not eligible to membership, then the Grand Army of the Republic should not be taxed to aid or support them.

I know of no principle of the Grand Army of the Republic whereby rebel soldiers can be placed on an equal footing with loyal soldiers in any charitable institution of the Order. On the contrary, all the teachings of the Grand Army of the Republic are that loyalty to the government from 1861 to 1865, with service in the Union army, is to be our only guide in the charities of the Order.

If any Department, in its magnanimity, should wish to aid ex-Confederate soldiers, it must be done in the way of voluntary aid, and from funds outside of the general or special funds of the Order; in other words, by the voluntary contributions of individual members of the Grand Army of the Republic.

83 DECISION 31. L. F.

Objects of the Organization.

The consideration by a Post of resolutions condemning the action of the President in vetoing the Dependent Pension Bill, and urging upon Congress the passage of the same over the veto, was held not to be outside the letter, spirit, or intendment of the declared objects of our Order, and no attempt to use the organization for partisan purposes.

At a regular meeting of a Post the following preamble and resolutions were presented, to wit:

WHEREAS, The President has vetoed the Dependent Pension Bill, passed by both Houses of Congress, being House Bill No. 10,457, thereby depriving many disabled and worthy comrades of that help to which we believe them justly entitled from the government which they helped to defend; therefore,

Resolved, That we most emphatically condemn the action of the President, which we believe was not justified by the reasons adduced in his veto message, allowing his premises were correct.

Resolved, That we call upon our representatives in Congress to stand by the principle involved in said bill, and pass the same, notwithstanding the President's veto.

On motion to adopt the same, a comrade interposed a point of order, as follows:

The Grand Army of the Republic is governed by a written Constitution, the preamble of which declares that the Order is organized for certain specific and accurately-defined "objects," which objects are set forth fully and without any omissions in Chapter 1, Article 2, of said Constitution, leaving nothing to be supplied by intendment or otherwise; and it is not within the letter or spirit or intendment of those declared objects to seek by organized effort to influence the official action of any branch of the government; and, least of all, to sit in judgment upon any such action already taken.

And since the action which the resolutions seek to condemn is inseparably connected with national politics, and the resolutions themselves are offensive and violent in tone, and since the Order is composed of individuals of varying political faith, the adoption of the resolutions must necessarily tend to weaken and destroy, and not "to preserve and strengthen" those kind and fraternal feelings which bind together all whom the Order seeks to enroll in its ranks, and thus to defeat one of its declared objects, as set forth in Chapter 1, Article 2.

[Chapter 1.—Article 2.]

Furthermore, it is a matter of universal public notoriety that the action sought to be condemned is, and is to continue to be, a subject of rancorous partisan discussion; and it is matter of history that another President of different political faith,—to wit, President Grant,—by his omission, purposely defeated an act of Congress as vital to the interest of the Grand Army of the Republic as the act just vetoed, without calling down upon his head the condemnation of this Order; so that, whether it be so intended or not, to adopt the resolutions is to reinforce one set of partisans, to involve the Grand Army of the Republic in such partisan discussion, and to put it in the attitude of condemning in one President what it freely condoned in another, with no apparent reason for the discrimination, except a difference in politics; and thus to "use the organization for partisan purposes," which is specially prohibited, whether intentional or not, by Chapter 5, Article 11.

The adoption of the resolutions being thus in violation of Chapter 1, Article 2, and Chapter 5, Article 11, of the Rules and Regulations, is therefore out of order.

The point of order was overruled by the Commander, whose ruling was, on appeal, sustained by the Post. An appeal was then taken to the Department Commander, who sustained the Post, and from his decision the present appeal was taken.

Opinion 31. H. E. T. May 23, 1887.

Two resolutions were submitted for the action of the Post: the first condemning the action of the President in vetoing the Dependent Pension Bill, and the second urging upon Congress the passage of the same over the veto; both being couched in respectful language.

The point of order was: That action thereon is not within the letter, spirit, or intendment of the objects of our Order as set out in the Constitution, and would tend to weaken and destroy, and not to "preserve and strengthen those kind and fraternal feelings which bind us together;" and further, that such action was an attempt to "use the organization for partisan purposes," in disobedience to Article 11, Chapter 5, of the Rules and Regulations; and that the Grand Army of the Republic having taken no action when President Grant failed to approve the bill for equalization of bounties, cannot now take action without subjecting itself to the charge of partisanship.

Should this point of order have been sustained is the question before us.

In specifying the objects of our Order, its Constitution wisely lays down certain broad and liberal principles, expressed in a few words of general significance, pointing out the ends to be attained, but silent as to the means; and the whole declaration must be taken together, and such construction given it as will accomplish the plain intent of its framers.

We may not pick out a single clause, and, by a forced construction, say that it forbids a certain line of action because such line is not in consonance with the wishes of any portion of our members; such holding would stifle all discussion and bar out any action except such as might receive unanimous support.

I cannot see wherein action on the proposed resolutions would tend to weaken or destroy the kind and fraternal feelings which bind comrades together any more than action on any resolution on which there is decided difference of opinion.

But "Fraternity" is not our only object; "we have still higher duties;" we are banded together "to assist such former comrades in arms as need our help and assistance." The Grand Army of the Republic, through its National Encampment, has already set the stamp of its approval on organized effort to secure just and beneficent pension legislation as one of the ways in which our duty in this respect shall be performed. The Dependent Pension Bill was passed at the instigation and largely through the efforts of the Pension Committee appointed under the authority of the National Encampment; a sufficient reason, in my opinion, why its passage over the veto should have been advocated by the different Posts.

In our republic there is "no such divinity doth hedge a king" as to remove any public officer from the criticism of the people, whose servant he is; and the right to express an opinion on his acts is as old as the Constitution. But in this case, condemnation of the veto was purely a secondary matter; the main purpose of the resolutions was their influence on those to whom the final decision of the question was to be submitted; and that the will of the people may be signified to their legislators by individual or concerted action is a part of our system of government.

When the action of public officials, as in the present case, has a direct and positive bearing for good or ill on the welfare of thousands of our fellow-comrades, I believe it not only our right but our bounden duty to take such organized action as will show in all clearness the feeling of that great body of patriotic men who compose the Grand Army of the Republic.

The introduction of partisan politics into our Order is wisely forbidden, but I fail to see wherein the discussion of this question involved any party politics or partisanship whatever. The bill was not conceived by or in the interest of any one party; it was not introduced or advocated as a party measure; it was in the first instance passed by the votes of members of each of the great political parties, and, in the subsequent attempt to pass it over the veto, both parties furnished votes in its favor and advocated it in debate. The benefits that would accrue from its passage extended equally to persons of each party and of no party; and the attempt to make it appear that action on the resolutions would be a violation of Article 11, Chapter 5, was, in my opinion, as unwise and injudicious as it certainly seems to me unwarranted.

The non-action of the Grand Army of the Republic in the matter of President Grant's action affords no precedent. The two cases are not identical. At that time Congress had adjourned, and the bill was dead; here, Congress was in session, with power to pass the bill over the veto. The only effect of action at that time would have been a forceless approval or disapproval of an act accomplished; in the present case, while the resolutions condemned the veto, their main purpose, as I have already said, was to influence the action of Congress about to be taken.

But were the circumstances the same, the mere fact that the Grand Army of the Republic did not then do what it might is no reason why it may not now do what it ought.

I think that the resolutions were proper for the consideration of the Post, that the point of order was not well taken, and that the decision of the Department Commander should be sustained and the appeal dismissed.

34 DECISION 2. J. P. R.

Independent organizations. Post representation in, is illegal.

It is not within the power of a Post to participate as a Post, against the objection of a member, in the formation of any independent organization which,

whether to be composed exclusively of comrades or not, is to be independent of the constituted authorities of the Order.

Presumptively, the objects of the Grand Army of the Republic can be best accomplished by the use of its own form of organization and plan of work. If any comrade believes that these objects, or any lawful objects, can be better subserved by other methods, he may resort to such methods alone or in conjunction with others; but every comrade has the right to insist that the Order itself shall not be used as an instrument for advancing purposes or methods in the name of the Order by means not subject to its control.

Opinion 2. W. G. V. November, 1887.

Post No. 28, Department of Illinois, received an official communication from Post No. 40, notifying them that said Post had instructed its Commander to appoint a committee of three to invite the other Posts of that Department to send a like committee to meet them, "for the purpose of forming The Service Pension Association of Illinois," and after stating reasons for such action, the communication closed as follows:

You, therefore, are invited to send a committee to meet with us on Wednesday, October 19, 1887, at ten o'clock A.M. at the Sherman House.

This bore the names of the committee and of the Post Commander, and was attested as official by the Adjutant of the Post.

At a regular meeting of Post No. 28, "a motion was made that a committee of three be appointed in compliance with the request contained in the communication." Thereupon, Comrade B. raised the point of order that the motion should not be entertained for the following reasons:

1. That it involves the discussion of a matter political in its nature.
2. That it involves action by members of the Grand Army of the Republic, and in the name of the Order, outside of any Post or Encampment, in such manner that the comrades who take the action will be in no way accountable to any Post or Encampment for the same, but still will act with the sanction of Posts of the Order.
3. That, by the action of the National Encampment at its twenty-first session, it was made unlawful for any members of the Order, in their capacity as such, to take action in favor of a universal service pension with a view to influence the Congress of the United States to pass such a measure.

The point of order was overruled and the motion prevailed. Comrade B. appealed, but the action of the Commander was sustained by the Post, and Comrade B. then appealed to the Department Commander.

The Post Commander subsequently appointed Comrade B. as one of the committee provided for in said motion. Comrade B. said he declined to serve on said committee, but the Post Commander refused to excuse him from such service, and Comrade B. then appealed from the whole action of the Post, in that behalf. Upon suggestion of Comrade B., the Department Commander

overruled the appeal *pro forma*, and sustained the decision of the Post and its Commander, from which decision Comrade B. appealed to the Commander-in-Chief.

I am unable to see wherein the action of Post No. 28, as set forth in this appeal, can be regarded as "partisan" or "political," in the sense in which such matters are prohibited in Article 11, Chapter 5, Rules and Regulations. The National Encampments having repeatedly entertained, and taken action on, the question of pensions, would seem to negate all claim that the consideration of the subject was obnoxious to the Rules and Regulations. If the matter of pensions is a proper subject of discussion and action in Grand Army meetings at all, plainly there can be no limitation to the discussion and action, provided it be in other respects within the Rules and Regulations, and not prohibited by action of the National Encampment. But, independent of this question, it seems to me plain that the action of Post No. 28 was unwarranted under our Rules and Regulations. The Post undertook to appoint a committee, to meet like committees of other Posts, for the purpose of forming "The Service Pension Association of Illinois." What that association was to be does not appear except as its name implies. But that, perhaps, is immaterial. It was evidently to be an organization outside of the Grand Army of the Republic, and not even necessarily limited to its members.

It is earnestly urged that the committee was not given the power to act without reporting to the Post and getting its sanction, and that certainly Posts may appoint committees to meet and consult upon matters of interest to their members. The language of the communication from Post No. 40, and of the motion to appoint a committee in Post No. 28, above quoted, would seem to import that these committees were invested with power to act in the forming of the proposed association. Any restriction upon them certainly rests only in implication, growing out of the fact that, being a committee appointed by a Post, they must report and get further authority before participating in the actual forming of the other association. If the Post had any authority to appoint such committee, it certainly might have appointed with power to take final action. It is simply a question of construction whether such power was given or not. I think it is immaterial which way that question is answered. The substantial question back is, Could the Post take any action? Or, to put it in general terms, Can Posts of the Grand Army of the Republic, as such, legally appoint committees to meet and form other associations, or take any action to that end?

It cannot be denied that Posts may appoint committees to meet and consult upon matters of interest to its members, provided they be matters upon which Posts may lawfully take action.

The action taken in this instance was an attempt to use the G. A. R. organization, through its constituent Posts, as a convenient means of forming another separate and apparently independent organization. If it could be done in this instance, I cannot see why our organization might not, in like manner, be resorted to for the purpose of forming associations for any laudable purpose,—as for the prevention of cruelty to animals, the promotion of the cause of temperance, or sending the gospel to heathen. The virtue of the object, or that it is one in which we, as ex-soldiers, are interested, or that it is to aid in carrying out the second grand object of our Order,—viz., Charity,—does not touch the question here involved.

No authority to Posts to take such action is expressly given in the Rules and Regulations, and none is necessarily implied in order to carry out what is expressed. If such power exists, it seems to me its tendency would be to work our destruction and ruin. If Post No. 28 could not upon the report of a committee

[Chapter 1.—Article 3.]

ARTICLE 3.

ORGANIZATION.

The several constituted bodies of this association shall consist of:

7* Posts.

1. Precinct organizations to be known as ..... (1) Post No. ....., Department of....., Grand Army of the Republic: *Provided, however*, That no Post shall be named after any living

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Note 3 [4] continued.

take any action in the formation of the contemplated association, then, plainly, it could not take the first step towards it. The whole matter was *ultra vires*.

As individuals, we may form or join whatever association we please, but when we undertake to act in Post organization, and meeting in the forming of other associations, we are outside of any authority granted or contemplated. The subject-matter or the purpose of any other contemplated association can receive our approval or disapproval as an organization, if within the provisions of our Rules and Regulations, and not otherwise prohibited.

Why should we join, as an organization, in forming another association to act in a behalf in which we, as an organization, can act? If it was contemplated that the proposed association should be limited to G. A. R. men, and that it should do only what the Department of Illinois, as a G. A. R. organization, or the Posts separately, could lawfully do, then why not let the action be by the Department or the Posts? Why form another association to do exactly what the G. A. R. organization may do? If it was intended that the association should do what the existing organization could not legally do, either as Posts or a Department, then plainly the Posts could not do indirectly that which they could not do directly.

Suppose only a minority of the Posts of the Department, and representing but a minority of the individual members, appointed such committees, and consented to join in forming such an association, yet that minority, so far as the communication of Post No. 40, or anything in the record of appeal shows, might go on and form the association, and we should have practically another G. A. R. organization outside, and not responsible to the regular organization, and possibly in conflict with it. It is suggested that the action of the Twenty-first National Encampment was such as to prohibit any action by a Post in aid of a service pension. I am unable to pass on that point, as I have not the official report of the proceedings of that Encampment. I decide on this appeal but the single point,—viz., Post No. 28 could not lawfully take part in the forming of the proposed association by the appointment of the committee to act in that behalf, and the point of order raised by Comrade B. was well taken.

For *Formation of Posts*, see Chapter 2, Article 1, page 55.

For *Formation of Departments*, see Chapter 3, Article 1, page 126.

7 [1] NOTE.—Prior to May, 1869, there was no provision in the Rules for naming Posts. In the revision of the Rules at Cincinnati this section was amended to read . . . "to which any Post may prefix the name of a *deceased* soldier

person, and that not more than one Post in a Department shall adopt the same name, and that the name shall be approved by the Department Commander (2).

Note 7[1] continued.

or sailor who died in the service of our country during the rebellion, or of some other person eminent during the war for loyalty and efficiency: *Provided*, That not more than one Post in a Department adopt the same name." In May, 1870, the word "deceased" was inserted before "person," so that the sentence should read "or of some other deceased person," etc.

This section was again amended at the Albany Encampment, 1879, so that a Post could adopt any name or title under the restrictions above prescribed:

1st. That no Post shall be named after a *living* person. 2d. That not more than one Post in a Department shall adopt the same name. 3d. That the name shall be approved by the Department Commander.

Under this rule we now have Posts named "Veteran," "Cavalry," "Naval," "Washington," "Lafayette," etc. R. B. B.

7[2] DECISION 24. L. F.

A Post may drop its old name and assume a new one by the same vote.

Soon after the death of our distinguished comrade, John A. Logan, several Posts in the Department of Illinois voted to adopt his name, and applied to the Department Commander for approval of such action. He decided the question of priority of claim in favor of Post No. 540, and from this Decision Post No. 81 appeals.

The grounds of appeal appear in this Opinion.

OPINION 24. H. E. T. April 1, 1877.

The appeal rests on two grounds:

1. That Post No. 540 could not assume the name of Logan, without first dropping the old name and obtaining the approval of the Department Commander.

If this means that a separate vote dropping the old name must be first submitted to the Department Commander, and approved before a vote can be taken to adopt the new, I cannot accede to it. I am of opinion that a Post may by one and the same vote drop an old and assume a new name (in other words, change its name), and that on approval by the Department Commander, such change of name becomes legal and in force. It does not appear what course was followed by Post No. 540 in the present case, but the action having been approved by the Department Commander, it must be assumed that the proper forms were observed.

I am therefore of the opinion that the action of the Department Commander should not be overruled, and that the appeal should be dismissed.

[Chapter 1.—Article 4.]

8 Departments.

2. State organizations to be known as Department of (name of State or Territory), Grand Army of the Republic.

9 National Encampment.

3. A national organization to be known as the National Encampment of the Grand Army of the Republic.

Article 4.

10* ELIGIBILITY TO MEMBERSHIP.

Soldiers and sailors of the United States Army, Navy, or Marine Corps, who served *between April* 12, 1861, *and April* 9, 1865 (3, 4), in the war for the suppression of the rebellion, and those having been honorably discharged therefrom after such service (5–19), *and of such State regiments as were called into active service and subject to the orders of United States general officers between the dates mentioned* (20–25), shall be eligible to membership in the Grand Army of the Republic.

No person shall be eligible to membership who has at any time borne arms against the United States (26–35). (*General Notes* 36–49.)

For *Admission to Membership*, see page 60, and notes.

10[1] Note.—Article 4, Chapter 1, read originally (Ed., 1868):

Soldiers and honorably discharged soldiers of the United States Volunteer or Regular Army or Marine Corps, or sailors and honorably discharged sailors of the United States Navy, only shall be eligible to membership in the Grand Army of the Republic.

No soldier or sailor who has been convicted by court-martial of desertion or any other infamous crime shall be admitted.

The Cincinnati Encampment (1869) adopted the article now in force, except the words and dates in *italics*, which were inserted by the Albany Encampment, 1879.

The clause "No soldier or sailor who has been convicted by court-martial of desertion or any other infamous crime shall be admitted" was omitted in the revision at Cincinnati, and the clause "No person shall be eligible to membership who has at any time borne arms against the United States" was then added.

The only direct provision against the admission of one convicted of desertion or any other infamous crime while in the United States service (and hon-

orably discharged after serving out a sentence) is contained in the form of APPLICATION FOR MEMBERSHIP. (See *Note 6*, page 25.) R. B. B.

HONORARY MEMBERSHIP.—There can be no "honorary" membership in the Grand Army of the Republic.

Resolution National Encampment, *Journal*, 1884, page 227.

10[2] DECISION 20. J. P. R.

Honorary Membership.

There is no such thing as honorary membership in the Grand Army of the Republic.

10[3] AS TO PERIOD OF SERVICE. (See *Notes 3, 4.*)

Prior to the amendment of 1879, soldiers or sailors who enlisted after the surrender of Lee were technically eligible to membership under Opinion 71, following, which was based upon judicial decisions. By the insertion of the dates between "April 12, 1861, and April 9, 1865," in this Article this Opinion is now inoperative in its bearing upon eligibility to membership in the Grand Army of the Republic. It is, however, here printed for the authorities cited as to the official declarations or decisions relative to the termination of the rebellion.

OPINION 71. W. W. D. December 20, 1875.

One who enlisted in the United States Army June 29, 1865, is eligible to membership. [Now void, as explained above.]

An applicant for membership in the Grand Army of the Republic enlisted in the United States army June 29, 1865, and was honorably discharged by reason of the expiration of his term of enlistment, June 29, 1868. Is he eligible to membership?

The question depends upon whether the applicant served in the army of the United States during the late rebellion.

I suppose that the exact locality of service in the army of the United States cannot be taken by any one as a criterion of service in the suppression of the rebellion. Those parts of the army that were garrisoned in forts in the Northern States, out of reach of the enemy's guns, formed an essential part of our force, and as truly served as if they had been in front of the conflict; and this service continued until the last portion of rebel territory was reclaimed. The question of the duration of the rebellion is the only one requiring attention.

Upon this point we have the decisions of the Executive, Legislative, and Judicial Departments of the government. The President issued his proclamation April 19, 1861, recognizing the existence of rebellion in South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas. Congress and the Supreme Court of the United States have accepted this date as the commencement of the war. The Protector, 12 Wallace, 700; United States *vs.* Anderson, 9 Wallace, 36. On the 2d of April, 1866, the President issued his proclamation, announcing that the rebellion was terminated in the States of Virginia, North Carolina, South Carolina, Georgia, Florida, Mississippi, Ten-

nessee, Alabama, Louisiana, and Arkansas; and finally, on the 20th of August, 1866, his proclamation, declaring that the rebellion was ended in Texas, and peace restored throughout all the United States.

Congress recognized the declarations as fixing the period of the rebellion by many enactments, and the Supreme Court, in the cases above referred to, declares that the first official declaration we have on the part of the Executive that the rebellion was wholly suppressed is in the President's proclamation of August 20, 1866, and hold that the war began and ended according to the declaration of the several proclamations referred to. These decisions have been followed in Phillips *vs.* Hatch, 1 Dillon, Cr. Ct. Rep. 5, 71, and other cases which it is unnecessary to refer to. It is then settled that the late rebellion began April 19, 1861, and finally ended August 20, 1866.

The applicant served in the army of the United States during that period, and was honorably discharged, and is eligible.

104 Decision 5. R. B. B.

Is an applicant who enlisted in September, 1865, eligible to membership in the Grand Army of the Republic, under the ruling of the Supreme Court, that the War of the Rebellion did not close until August 20, 1866?

No. The Rules and Regulations require an applicant to have served in the war for the suppression of the rebellion between April 12, 1861, and April 9, 1865. Our rules were so amended to meet the decision of the Supreme Court in the Opinion (71) referred to.

Honorable Discharge Requisite. (See *Notes 5–19* inclusive.)

105 Opinion 69. W. W. D. October 14, 1875.

Honorable Discharge necessary.

Certain applicants for membership in the Grand Army were reported, upon their regimental returns in the army, as deserters, having been unavoidably detained on furlough longer than their allotted time, and the question is asked, Are these men eligible?

The same question arises in the case of T. J., who has been mustered into a Post of the Grand Army, but is afterwards discovered to be recorded in the State roll of volunteers as a deserter.

The question must be answered by ascertaining whether the candidates can present honorable discharges. If so, notwithstanding the fact of a technical violation of military law, they are eligible to be balloted for as candidates. The members of Posts, by their votes, will decide whether the offence committed in each case was of such a nature as to prove the applicant unworthy to be received among true soldiers. If they have not honorable discharges from the army they are not eligible to be voted for.

In the case of T. J. the same rule holds. If he presented an honorable discharge he is properly elected, and the Post cannot invalidate its action; if he did not have such a discharge he must be dropped, and the Post is deserving of severe censure for not requiring it before the ballot.

I would refer, also, to the case discussed in Opinion 54, July 19, 1873. (*10*[6].)

10[6] OPINION 54. W. W. D. July 19, 1873.

Desertion and Re-enlistment.

One who deserts from his company or regiment and joins another, and from the latter organization receives an honorable discharge, is not *eligible to membership.*

A. B. enlisted in the Union army during the rebellion. Because of the persecution of his commanding officer he deserted his company, came north, and again enlisted in the Union army as A. C. He now makes application in his own name, A. B., for membership in our Order. Can we muster him? It is argued that he is admissible, as President Lincoln's proclamation pardoned all deserters, and men of the Post who served with A. B. justify his desertion, and vouch for his subsequent honorable service under the assumed name.

I may say, in the beginning, that as I understand the law which I am called on to interpret, no oppression will justify a soldier's leaving the service he has sworn to perform and take a new enlistment, with probably a larger bounty, at his will. I apprehend that the cases are very few where, on application to the proper authorities, a man's wrongs would not be redressed, or he be allowed a transfer into the company of another commander. And by orders from the War Department it was made the privilege of any enlisted man to take a transfer to the navy, whether his commanding officer approved or not.

Our Rules and Regulations of 1868 expressly provided that "No soldier or sailor who has been convicted by court-martial of desertion or any other infamous crime shall be admitted." When the revision of the Regulations was made in 1869, it was considered that many soldiers were convicted of technical desertion who never had any intention of actually leaving their colors, and it was not thought best in the General Regulations to go behind an honorable discharge, except where the soldier had been in the rebel service, so this clause was omitted.

This action practically left the case of all such persons who should apply for membership to the decision of the ballot, and allowed them to be mustered if they could win the suffrages of the prescribed majority of the Post. It must be remembered that not all persons who are permitted to become candidates ought to be received. Every comrade in voting should express his opinion of the fitness of the applicant, and one who has been a deserter, though afterwards pardoned or never apprehended or tried, would usually be coldly received by men who performed faithfully the difficult and dangerous duties as well as the easier ones the service imposed.

The case of A. B.'s eligibility, then, must be decided by the answer to the question whether he can present an honorable discharge. If he can he may apply for admission. I do not go so far in answering this question as to say that the fact that his honorable service and discharge were under an assumed name would render him ineligible. But when a discharge is presented that bears *prima facie* marks of fraud, we are warranted in inquiring how he obtained it, and what was his motive in concealing his true name. If we find, as in this case, that the name was assumed to shield him from the punishment of a crime which, if known, would have prevented him from receiving the dis-

charge, it would be a misuse of language to call a discharge so obtained an honorable one.

The proclamation of the President has nothing to do with the case. *A pardon does not annul the crime;* it only waives the punishment. I think that A. B. is not eligible.

107 Opinion 22. W. W. D. January 29, 1872.

1. If a dishonorable sentence is revoked and an honorable discharge granted, then the party thus discharged is eligible.

2. All persons eligible should not be elected to membership. Care should be exercised.

Is a cashiered officer of the army, who afterwards has the disability of the sentence removed by General Order from the War Department, eligible to membership in the Grand Army of the Republic?

1. The answer to the question must turn upon the extent of the order removing the disability of the sentence. If the officer was granted an honorable discharge, he is eligible to membership, though previously he had been dishonorably discharged. So if a person once dishonorably discharged has the order cashiering him revoked, and he is reinstated in the army, he will then be eligible to membership.

2. It must be borne in mind, however, that we ought not to elect to membership all persons who are eligible to apply for it. The Post receiving an application should make proper inquiries in regard to the character of the applicant, and if there is anything in his past record or present character which they deem sufficient to make him an unsuitable companion for themselves, they should reject the application. The Regulations place this power in their hands, and it is expected that they will exercise it for the good of the Order, with impartiality, and without personal feeling.

The question in this case is generally stated, and I can, therefore, only answer in general terms. If the facts of the particular applicant for admission in the present case were detailed I might make my decision more specific.

108 Decision 14. S. S. B.

An officer who was by order of the President dishonorably dismissed from the army, and whose disability to re-enter the army because of such order was removed by a subsequent order, is eligible to membership in the Grand Army of the Republic.

Decision 7, J. S. K., to the effect that "an officer who was dishonorably dismissed from the army, June 10, 1864, by order of the President, and whose disability to re-enter the army attaching to this order was removed by another order dated July 29, 1879, is not eligible to membership in the Grand Army of the Republic," was reversed by the Encampment at San Francisco, and the following Decision and Opinion was adopted. The Opinion reversed (No. 7, D. R. A.) will be found in full, page 82, *Journal*, 1885.

R. B. B.

Opinion 14. C. H. G. June 21, 1886.

At the National Encampment at Portland, the following entry was made on the *Journal*, page 261:

Resolved, That all proceedings heretofore had in the case of J. K., a dropped member of the Department of Pennsylvania, be revoked; that the Commander of that Department be directed to order a Court of Inquiry to inquire as to his eligibility to membership in the Grand Army of the Republic; and that the findings of such court should be submitted to the Commander-in-Chief for final action.

Pursuant to that order, the Department appointed a Court of Inquiry of five members, who proceeded to inquire and ascertain the facts in the case. They are here given:

1. K. enlisted November 10, 1861, as a private, for the period of three years.
2. He was discharged by order of the War Department.
3. He was commissioned as second lieutenant, and mustered into the United States service as such, March 20, 1862.
4. He was commissioned as first lieutenant in the same company and regiment in April, 1863, but not mustered as such.
5. He was taken prisoner at the battle of Winchester, June 15, 1863, and held as prisoner of war until March 20, 1864, in Libby Prison, Virginia, and paroled at Richmond, Virginia, March 20, 1864.
6. He reported at Camp Parole, Annapolis, Maryland, where he received a twenty days' leave of absence, and returned to Camp Parole at the expiration thereof.
7. He applied for another leave of absence, but before the same was granted he left Camp Parole without permission and went home. On his return, by direction of the President, and upon the report of a Board of Officers, instituted by Special Orders No. 294, July 3, 1863, from the War Department, Adjutant-General's Office, and by Special Orders No. 203, June 10, 1864, from the same office, he was dishonorably dismissed the service of the United States for absence without leave; contempt of authority; for leaving his post without permission; and for making false statements to the Adjutant-General of the army relative to said absence, while yet a prisoner of war on parole.
8. On July 29, 1879, the disability resulting from his dismissal from the service was removed by the proper authority at Washington, and official notice thereof forwarded to the Governor of Pennsylvania, July 29, 1879.
9. He made application for membership in the Grand Army June 17, 1880, and the examining committee reported favorably upon said application.
10. He was elected July 5, 1880, and duly mustered into the Post August 19, 1880.
11. He was elected Commander of the Post in December, 1883, and installed in January, 1884, and served as such until January, 1885.

The majority of this court found, while upholding their own jurisdiction in the matter, which had been excepted to by counsel for K., that a true construction of Chapter 1, Article 4, of the Rules and Regulations, which read as follows: "Soldiers and sailors of the United States Army, Navy, or Marine Corps, who served between April 12, 1861, and April 9, 1865, in the war for the suppression of the rebellion, and those having been honorably discharged therefrom after such service, and of such State regiments as were called into active service and subject to the orders of United States general officers between

the dates mentioned, shall be eligible to membership in the Grand Army of the Republic. No person shall be eligible to membership who has at any time borne arms against the United States," is to make eligible to membership in the Grand Army of the Republic any soldier or sailor "who served between April 12, 1861, and April 9, 1865, in the war for the suppression of the rebellion," whether holding an honorable discharge or not. That is the effect of their ruling. They further found that the action of the War Department in revoking the order of dismissal of K. was equivalent to an honorable discharge. The minority of the court held the converse of these two propositions, and this case comes here by appeal, and these are the questions presented. The case is a most interesting one, and in my opinion fully justifies a complete publication of the same.

There are three questions involved in this case, as follows:

First. What was the jurisdiction of the Court of Inquiry ordered by the Department of Pennsylvania?

Second. Is it a pre-requisite to eligibility in the Grand Army of the Republic that the applicant shall have an honorable discharge from the military service in which he was engaged?

Third. What is the character and effect of the order of the War Department relating to Lieutenant J. K., and dated July 29, 1879?

First. As to the first, it was clearly competent for the National Encampment to authorize and direct the Department to inquire and report to the National Encampment the exact status of any member of the Order. The National Encampment in its jurisdiction is supreme, and I know of no objections to the exercise of this jurisdiction in the manner exercised in this case. It was the ascertainment of the fact, or a set of facts, and settled no legal questions; nor did it settle the right of Lieutenant K. It reported facts upon which the National Encampment can act in any way that it sees proper. I hold that the effect of this decision cannot summarily dispose of the status of Comrade K., but ascertain the facts of his case, and lay down the law of the Order, in so far as its opinion may be approved by the Commander-in-Chief and the National Encampment. Its action, therefore, is not void *ab initio*, and, taking the views which I do, the scope of its operations is not important.

Second. I cannot sustain the position of the majority of the Court of Inquiry in holding that an honorable discharge or its equivalent is not a pre-requisite to membership in the Grand Army of the Republic. The position taken by the majority is ingenious and attractive as a specimen of special pleading, but I cannot give any assent thereto. The question arises upon the construction to be given to Article 4, Chapter 1, of the Rules and Regulations: "Soldiers and sailors of the United States Army, Navy, or Marine Corps, who served between April 12, 1861, and April 9, 1865, in the war for the suppression of the rebellion, and those having been honorably discharged therefrom after such service, and of such State regiments as were called into active service and subject to the orders of the United States general officers between the dates mentioned, shall be eligible to membership in the Grand Army of the Republic. No person shall be eligible to membership who has at any time borne arms against the United States." I recognize and give full force and effect to the fact that there was a change of phraseology in this article defining the requisites of membership made at the time and under the circumstances stated by the majority of the court, and I give full force and effect to the legal proposition that the change of a statute or a rule, or a constitutional provision that strikes out certain words or puts in certain other words, must be held to have been done intelligently and to accomplish the purpose which seems to be accomplished thereby. In other words, that a legislative act will be held to have been done deliberately and for a purpose; but I recognize at the same time

the general and controlling proposition that the language of the new statute, in this case the new article, must be so construed as to give effect to all its parts, all its words. To hold otherwise would be to give to the authority construing an article, a by-law, a regulation, a rule, the power where words seem to be in conflict and ideas in antagonism; to the officer reviewing and construing said article or by-law, the power of re-legislating by adopting certain language as in force and effect, and certain other language as having no force and effect. Apply this principle here. Give to this article the construction claimed by the majority, and the following words, "and those having been honorably discharged therefrom after such service," would be left absolutely without any meaning whatever. They would be surplus words; and not only that, but words excluded because they mean that which the words retained do not mean. I cannot consent to such a construction, nor yet do I concur in the report of the minority in some of their expressions. For instance, it will not do to hold that because the founders of the Order described themselves as "We, the soldiers and sailors, and honorably discharged soldiers and sailors," etc., that that language, that self-assumed description of the founders of the Order, shall color and control the future and subsequent legislation of the Order; but, nevertheless, this article must be construed in the light of contemporaneous construction. What has been the understanding of the members of the Order, from the lowest to the highest, if there are grades in the Order, as to the essential pre-requisite of membership? It has been that a member should have served honorably in the armies of the United States, and has an official discharge to show that fact. Giving the construction claimed by the majority, and it is only necessary that the soldier served one day, one month, that he was guilty of crimes innumerable, and that he finally deserted or was dismissed by a court-martial; if he can only secure the approbation of the members of a Post he can become a member of this Order of ours. I cannot so hold, and going backward from that I am driven to conclude that this association was made for men who carry as one of the ornaments of their career an honorable discharge from the service of their country. Words of negation and disqualification are used as follows: "No person shall be eligible to membership who has at any time borne arms against the United States." No matter that afterwards he joined the armies of the Union, served his three years, and was honorably discharged; the taint of treason hangs upon him. Political parties may condone treason; commercial interests may find it desirable to obliterate the traces of the war; the future of the country may demand the co-operation of all its citizens upon an equal political footing; but the Grand Army of the Republic recognizes that the stain of treason is indelible, and that "treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort." So, then, what have we? I hold that this article on the subject of eligibility means, first, that soldiers and sailors of the United States army who served between certain dates in the war for the suppression of the rebellion—those having been honorably discharged therefrom after such service—are eligible; and that the attempt to emphasize the language of this article in fact operated to make it obscure, but that by the rule of construction that I have adopted all this language must be construed and given force and effect, and that in the light of the career of the Order, its rulings and teachings and practices, that is the true construction; that it is necessary that he should have served between the periods, and that the article means in effect literally just this, and ought to have under all circumstances this construction: "Such soldiers and sailors of the United States Army, Navy, or Marine Corps, who served between April 12, 1861, and April 9, 1865, in the war for the suppression of the rebellion, and were honorably discharged therefrom after such service," etc. If this is not

the true interpretation of this article it ought to be; and if the National Encampment overrules this opinion, then it ought to order a revision of that article to make it conform to the spirit and purpose of the Order. If it sustains this opinion upon this branch, perhaps that will be sufficiently declaratory of the true intent and meaning of this article.

Third. It therefore appears that Comrade K. was eligible to be a member of the Grand Army of the Republic if this order of July 29, 1879, has the force and effect of an honorable discharge from the army. Prior to the issuance of that order it will not be successfully contended that he was eligible. His eligibility depends upon the effect of that order. In the first place it may be stated here that the original order of the War Department, dated January 24, 1865, was, and is, an order that grates harshly upon the heads and hearts of the American people. Here was a soldier who had borne arms for his country, and had sustained an honorable character. It is not claimed that his offence was heinous; it was rather *malum prohibitum* than *malum in se.* It was rather a crime because forbidden than because of any inherent turpitude. He was consequently dishonorably dismissed from the service, and branded with a stain so deep as to make him unfit for the society of his comrades. He had not been heard; he had not his day in court; the spirit and the letter of the Constitution of the country, and all the principles of liberty and justice which antedate it, and which form the basis of all that is worth having in America, were violated. I do not stop to discuss the sentence. War is cruelty and produces cruelty to the enemy, and it produces cruelty to friends. The rush of events precludes deliberation. The animosities of war sometimes destroy calm and deliberate judgment even where friends are involved: and surely the Grand Army of the Republic will not go out of its way and strain a point to render perpetual as against Comrade K., and brand his posterity to a date as late as the memory of men shall run, because of an *ex parte* order, the justice of which he had no opportunity to defend against, and which subsequent events have shown was wholly without justification, and a direct usurpation and outrage. For it will not do to say at this late day that the *ex parte* order was now reversed; has been reversed on grounds too slight, and that there remains something of justice in the old order that has not been wiped out by the new. So, then, in the consideration of this question we ought to give to this action of the War Department on the one hand no greater effect than is absolutely necessary, and give to the subsequent action of the War Department on the other hand all the force and effect which humanity and even-handed justice between man and man will allow.

It has been held, and my honored predecessor, Comrade Austin, dwelt upon it in the disposition which he made of this case last year, that an order of the War Department dismissing a volunteer officer, which had been revoked, did not operate to remove all of the disabilities imposed by the former judgment or sentence. He cited the opinion of the Attorney-General of the United States, Brewster: "In the case of a volunteer officer unjustly dismissed by sentence or by order, during the war, and applying for restoration, there is the obstacle (not encountered in a case of a regular officer) that the volunteer contingent of the army has long since disbanded, so that a restoration to office in the same is impracticable; and as a dismissed officer cannot, of course, be granted an honorable discharge from the army without first being readmitted to the army by a new appointment, and a volunteer officer *as such* cannot be so readmitted in a case of a volunteer officer applying for relief on account of an unjust dismissal, that the form of relief most apposite to his case would be a special enactment giving him *pay* from the date of his dismissal, reciting that the same was based upon insufficient grounds, to the date of the final muster-out of his regiment, precisely as if he had continued regularly in the

service during the interval." Personally, I do not hold this authority in high esteem. But this opinion has no application to the question under consideration. What is the question in the case of Comrade K.? It is this, and nothing more. Had he, when he applied to be admitted as a member of the Grand Army of the Republic, an honorable discharge from the service? Not this question: Could K. be reinstated in the service as an officer?—could K. be paid for the time he was wrongfully out of the service? Neither of these questions arise here, and surely this opinion, which I cannot approve for any purpose, ought not to have any effect beyond the actual question which he was deciding at the time. The rule *obiter dictum* applies just as forcibly to opinions of this character as to judgments of courts; and as far as the questions made by Comrade K. are concerned, the utterances of the Attorney-General heretofore cited are, if they apply to all, *obiter dicta*. This question is, Did the order of the War Department of July 29, 1879, cleanse the soldierly character of Comrade K., did it restore him to his position of an honorable man among his fellows? That is the only question; and if it did he was eligible, and if it did not he was not. Now, then, what have we? The War Department so issues an order, based upon a report,—an *ex parte* report. It has a certain effect; one of its effects is *in præsenti;* another of its effects is *in futuro*. Its present effect was to deprive Comrade K. of his position in the army and his pay. He stood branded up to 1879; he lost his pay; he lost his rank; because those three things were within the scope of the order, and the natural and necessary effect of the order. But it has been held a hundred times that a continuing sentence can be revoked. The prisoner in the penitentiary is under a continuing sentence. It can be revoked; and it depends upon the character of the revocation as to its effect. Now, the government of the United States that placed this stigma upon Comrade K. has been careful to ascertain the effect of this sort of an order, and this sort of restoration, and this is the law of the land; this is the declaration and judgment of the power that assailed Comrade K. "The effect of the removal of disability is not to restore the volunteer officer to his former position, but to remove the stain of the sentence, and to declare him qualified to re-enter the service if desired. It is a measure of reparation equivalent, practically, to an honorable discharge." This power, then, was able to brand K. for all future time, so long as the branding-iron was held there by that power, and no longer; and when it took the iron away the brand was removed. It is a strange confusion of ideas that because it has been held that the government, by the revocation of an order like this, cannot put an officer back into a place that has ceased to exist, that therefore it cannot remove the stain from his moral character and his soldierly character. Why cannot it put him back where he was? Because the place is gone. If the revocation took place during the existence of the vacancy which his removal had caused he would have been put into it, and then the other side of this question would have said that that was a complete restoration; because it is physically impossible to put him back, they say it is morally impossible to cleanse his character. One thing is impossible because it is impossible; the other thing is possible because it is possible.

Without further comment, I hold that the order of the War Department of July 29, 1879, operated upon the former order to extinguish and to obliterate so much of the order as remained unexecuted, and to cleanse and cure the injury which it had done. Any other conclusion, in my judgment, would be a stultification of common sense, and it would be an attack upon the fundamental principles of justice and fair play. The government saw fit to do all it could to restore Comrade K. Shall we, his brethren, his comrades of the battle-field, put ourselves into the record and say that while we had no part or parcel in the original controversy between him and the War Department, and while the

War Department has taken back and expunged all that it ever said about it, and testified to him that he stood as well as he ever stood, shall we take up the quarrel now, and inject ourselves into it and say we shall not forgive him? But forgiveness is not the true word. There was nothing to be forgiven. He has done no harm; that is the logic of the record. There was nothing unworthy in his career; that is the conclusive force of these orders. He is entitled to our respect and confidence, and to decide otherwise would be to open up the career of every soldier, notwithstanding the force and effect of his honorable discharge.

The results which I have reached are:

First. The appointment of this Board was lawful as a means of ascertaining the status of Comrade K.; and the National Encampment has a right in this way to construe this article upon the subject of eligibility.

Second. It is a pre-requisite to membership in the Grand Army of the Republic that the applicant shall have served in the army within the periods named in Article 4; and has been honorably discharged from service.

Third. When an officer or soldier has been dishonorably dismissed from the service of the United States, by judgment or order, and such judgment or order has been revoked without condition, by a notice containing the rulings of the War Department, that such revocation removes the stain of the former order, such subsequent action of the War Department is, for the purpose of the eligibility of a soldier, equivalent to an honorable discharge from the service.

10[9] Decision 19. S. S. B.

A special order of the President of the United States, directing that an officer who has been dishonorably dismissed from the service of the United States shall, upon the receipt of a new commission from the Governor of the State from which his regiment came, be again mustered into service and mustered out with his regiment, cures the disability resulting from the officer's dismissal, notwithstanding the fact that before the new commission arrived the regiment was mustered out.

Opinion 19. C. H. G. July 19, 1886.

An officer received an honorable discharge, and subsequently was commissioned as first lieutenant, Fiftieth Regiment New York Engineers, and was dishonorably dismissed from the last-named service. By special order of the President of the United States, the disability incident to his dismissal was removed, said order directing that upon receipt of a new commission from the Governor of New York, he should be again mustered into service and mustered out with his regiment. Before the commission arrived, however, his regiment was mustered out. The Commander of the Department decided that he was eligible to membership in the Grand Army of the Republic. A comrade appealed from said decision.

I am of opinion that this comrade is eligible to comradeship in the Grand Army of the Republic. The reason is given in the K. case at great length in these decisions. (See *Decision 14*, 10[8].) That has the same principle and spirit, and therefore I do not take up the room in this report. I merely hold

that the action of the War Department, by special order, dated June 10, 1865, cured any disability that at that time rested upon Comrade D., and made him eligible to membership.

10[10] Decision 17. S. S. B.

A soldier was honorably discharged for promotion, was commissioned and mustered and subsequently dismissed, again re-enlisted (third time), and after serving his time was honorably discharged. Held, that because of his final honorable discharge he is eligible to membership.

Opinion 17. C. H. G. June 18, 1886.

A. B. was mustered in the Twenty-ninth Regiment Massachusetts Infantry, on the 18th day of May, 1861, for three years, and was honorably discharged therefrom on the 28th day of December for promotion, and commissioned second lieutenant, and appointed adjutant of the same regiment. The regiment was ordered home, and while on the way, at Cleveland, Ohio, A. B. committed certain acts, for which charges were preferred, and he was dismissed the service of the United States by Special Orders, a copy of which is submitted herewith, which order has never been revoked.

On the 17th day of September, 1864, A. B. (after his dismissal) enlisted for one year, and was mustered as first sergeant in the Fourth Massachusetts Cavalry, and on May 22, 1865, was honorably discharged therefrom. Is A. B. eligible for membership in the Grand Army of the Republic?

In the case of Comrade K., Department of Pennsylvania, it has been held that notwithstanding the former dismissal from the service, where the comrade had an honorable discharge by virtue of an order of the War Department revoking his dismissal, that the subsequent honorable discharge related back and removed the stain of the former dismissal. See (*Decision 14*, S. S. B., 10[8].)

The principles of that decision apply with full force in this case. Notwithstanding the former disgraceful record the soldier is an honorably-discharged soldier of the Union army; and whether his re-enlistment was in fact a setting aside of his former disgraceful record or not, it is not important to say, though it must be conceded that his subsequent honorable service, which is evidenced by an honorable discharge, places him in the category of eligibility in the Grand Army of the Republic.

I am of the opinion that he is eligible.

10[11] Decision 8. S. S. B.

Enlistment under Assumed Name.

It is not fraud—in any necessary sense—for a comrade to have enlisted under an assumed name. If he received an honorable discharge he is eligible. A Post admitting such comrade with a full knowledge of the facts, conveyed by his own statement, is estopped from denying the validity of his muster-in.

[Chapter 1.—Article 4.]

Opinion 8. C. H. G. December 4, 1885.

A comrade applied to a Post for membership. He stated that he had enlisted in a Brooklyn regiment, and finding soon after that service in his company was for certain reasons unendurable to him, he left the regiment and came home. That he determined not to go back, and enlisted in a New Hampshire regiment under an assumed name,—his mother's,—serving with credit, obtaining promotion, and being discharged with an honorable record. The Post Commander wrote to the Adjutant-General of the Department, stating the facts, and received a communication in reply to the effect that the candidate was eligible. The candidate was proposed, and the facts stated to the Post, and, upon a favorable report, he was elected and mustered. Afterwards some feeling against the comrade arose, and the Department Commander applied to the Commander-in-Chief for his opinion as to whether or not this comrade was eligible. The Department Commander, it should be said, had decided that the comrade was eligible.

This comrade practised no fraud upon the Post into which he was mustered. Hence there is no foundation for the idea that his muster was void. The comrade frankly stated the truth in regard to his military history. The Post acted upon that statement and mustered him in. It does not lie in the mouth of that Post, nor any of its members, after the action of a majority of that Post, acting within the scope of its jurisdiction, to now seek to treat that action as though it had never been made. But what is there in the case? "Soldiers and sailors of the United States Army, Navy, and Marine Corps, who served between April 12, 1861, and April 9, 1865, in the war for the suppression of the rebellion, and those having been honorably discharged therefrom after such service, . . . shall be eligible to membership in the Grand Army of the Republic." There may have been acts of the comrade during his service that would operate to induce members of his Post to reject his application; but he is eligible when he has the qualifications thus enumerated. It was no fraud in any fair sense for a comrade to enlist in a New Hampshire regiment under an assumed name, and it is certainly most technical to say that he, R. D. S., has no discharge. The discharge was not given to the name. It was given to the man. It was an honorable testimonial that the flesh and bones and the blood and the patriotic soul of the man had honorably borne arms for the suppression of the rebellion; and it was given to the same thing or things against which the rebel shell and shot had been fired. His name was wholly unimportant. A musket in the hands of John Smith that had been borne in the name of Samuel Jones is just as effective; and the man who bares his breast to the rebel bullet earns the undying gratitude of his country, no matter if he shield himself for some purpose under an assumed name. How was it during the rebellion? Thousands of men in Tennessee, Georgia, Kentucky, Alabama, West Virginia, Arkansas, and many other Southern States enlisted under assumed names and fought nobly. They enlisted under assumed names for various purposes and risks, and the government of the United States asked their physical condition, and not the question of the titles under which they were running. This man, then, had received an honorable discharge. He had frankly told the whole story. It did not disqualify him. He was eligible and qualified, and all that could be alleged against him was merely a matter to be submitted to the comrades of the Post, and when they had acted upon it they were estopped to deny the propriety of their own action. Admitting that this case can be strongly

argued on the other side from the technical stand-point occupied by the appellant, I can see nothing in it to justify a reversal of the mature judgment of the Judge-Advocate of the Department and that of the Department Commander.

10[12] DECISION 15. R. A. A.

Samuel B. regularly enlisted, served three months, and went home on account of sickness; his brother Frederick visited his regiment, took the place of Samuel, and served until the regiment was mustered out, by the name of Samuel. The taking of his brother's place and answering to his name was wholly voluntary on his part. Samuel B. only is eligible to membership in the Grand Army of the Republic.

OPINION 15. D. R. A. 1890.

Samuel B. enlisted September 1, 1864, in the Forty-fifth Regiment Missouri Infantry, for the term of six months. At the end of three months he went home on sick-leave, and his brother Frederick went to the regiment and took his place, answered to the name of Samuel, and served until the end of the term of Samuel's enlistment, when he was mustered out with the regiment, receiving an honorable discharge in the name of Samuel B., which he, Samuel, now holds. Are either or both of these men eligible to membership in the Grand Army of the Republic?

Both rendered sufficient actual service in the army to entitle them to membership in the Grand Army of the Republic, if they had both been regularly mustered into and discharged from the army. But Samuel is the only one that has any record service. Frederick's service was wholly a voluntary one; he was simply acting for Samuel, by the sufferance of the officers, if they knew it. He was never mustered, nor did he receive any discharge in his own name. His service was that of Samuel's, and was so credited on the rolls of the regiment. It was the service of but one person, and that person was Samuel B. Therefore, Samuel B. only, by reason of such service and discharge, is entitled to membership in the Grand Army of the Republic.

10[13] DECISION 5. L. F.

The possession of a formal discharge paper is not a necessity where the applicant was in fact honorably discharged.

On October 10, 1861, A. W. was sworn into the service as a member of a company being raised for the Twenty-seventh Kentucky Volunteer Infantry (Union).

Before the organization was completed and the regiment mustered, a company picked from the men at the rendezvous was sent out on an expedition. A. W. was one of this company, and in an engagement was severely wounded and taken prisoner. By these wounds he was so crippled as to be ever after unfit for service.

About March, 1863, he was formally mustered into and mustered out of the United States service and received a pension, but has no discharge paper or other written evidence of service other than his pension certificate. Is he eligible to membership in the Grand Army of the Republic?

Opinion 5. H. E. T. November 20, 1886.

The possession of a formal discharge paper is not a necessity where the applicant was in fact honorably discharged. From the within statement it appears that the applicant rendered service after being sworn in, and was formally mustered into and out of the United States service; if this is so, he is eligible.

The verification of the statement must be by evidence submitted to the Post.

10[14] Opinion 133. J. R. C. August 12, 1882.

Minors discharged on writ of habeas corpus are eligible.

Two soldiers were duly mustered into the United States service, but not being of the required age, were by their parents taken out on a writ of *habeas corpus*, after a short service. Are they eligible to membership? One is a charter member of the Post.

A strict construction of Article 4, Chapter 1, Rules and Regulations, might exclude the parties from membership. But as they were duly *mustered into the service*, and were for a time *subject* to the *orders* of United States officers, that part of the requirements of said section was complied with.

The next question to be answered is, Does the order of the Court in the *habeas corpus* proceedings take the place of a discharge? The fact that they afterwards rendered service in the army as soldiers, though not then mustered in, tends to show that they did not of their own motion seek to be released by process of the courts. Adopting, therefore, a liberal and, I think, a just construction of the law, I say they are eligible, and should be admitted.

10[15] Opinion 132. J. R. C. July 31, 1882.

Muster-in to the service necessary.

Honorable discharge necessary.

A. E. L. served as a musician in Company I, One Hundred and First New York Volunteers, through the Peninsular campaign and at the second battle of Bull Run, but was never mustered, on account of his age,—thirteen. Can he become a member of the Grand Army of the Republic?

Two things are requisite to membership in the Grand Army of the Republic:

First. He must be either a soldier or sailor of the United States army or navy or marine corps, or of a State regiment, etc.

Muster-in is imperative in order to be a soldier. A citizen is not subject to orders of any United States army officer.

Second. Every applicant for admission must have an honorable discharge from one or the other of these branches of the service.

Although the party herein named may have rendered the service claimed, yet he cannot be admitted to membership in the Grand Army of the Republic for the reason that he was never mustered into the service; not being mustered, was not subject to orders, as provided in Article 4, Chapter 1, and not being mustered, of course never received an "honorable discharge."

10[16] DECISION 9. J. S. K. April 3, 1885.

Volunteer Aide not eligible.

A person who served during the war for the suppression of the rebellion only as a citizen or volunteer aide on the staff of a general officer, without having been commissioned or mustered into the army, is not eligible to membership in the Grand Army of the Republic.

Is a person who served during the war for the suppression of the rebellion only as a citizen or volunteer aide on the staff of a major-general, without having been commissioned or mustered into the army, and who received no pay for such service, eligible to membership in the Grand Army of the Republic?

Chapter 1, Article, 4, Rules and Regulations, defines who are eligible to membership. The terms "soldiers and sailors" therein used applies only to such as were duly mustered into the army or navy. A volunteer aide upon the staff of a general officer was there only by the courtesy of such officer. He was not subject to duty, except as he chose to perform it. Though he may have been given certain rank while acting as such aide, he was nevertheless only a civilian, voluntarily performing the duties of a soldier, and could terminate such service at his own pleasure. He was not a soldier of the United States army, and could receive no discharge therefrom, and is not, therefore, eligible to membership in the Grand Army of the Republic.

NOTE.—The question of admitting to membership persons who were in actual service during the rebellion, without being formally mustered, was presented to the National Encampment at San Francisco (*Journal*, 1886, page 150), and was referred to the Committee on Rules, Regulations, and Ritual, which recommended as follows:

That individual cases of a class should not be taken up by the National Encampment, but that provision for all of the class should first be made. Further:

That Departments be instructed to request such persons in their jurisdictions as have actually served in the army, navy, or marine corps of the Union at any time during the period mentioned in the Regulations, but without muster into such service or discharge therefrom, to state their cases in writing, and forward the same through the proper channels to the Adjutant-General, to be brought before the next National Encampment, and that the Judge-Advocate-General be requested to classify all such cases, and present at that time a form of regulation to cover the same. (See page 241, *Journal*, 1886.)

A proposition to so amend the Rules and Regulations was submitted to the St. Louis Encampment, and was rejected. R. B. B.

10[17] OPINION 131. J. R. C. July 20, 1882.

1. Enlistment without muster into the service not sufficient.

2. Commission without muster not sufficient.

3. Quartermaster's clerk not eligible.

4. Being a scout without being mustered not sufficient.

5. Enlistment, muster, and honorable discharge absolutely necessary.

B. C. enlisted in the Third Ohio Volunteer Cavalry, but before mustering under that enlistment was commissioned as recruiting lieutenant in the Ninth Ohio Volunteer Cavalry, and was engaged in that work for several months. Was unable to pass muster by reason of rupture. He then went into the quartermaster's department as a clerk, subsequently volunteered as a scout, and in these positions served until the close of the war. During this service he was twice captured by the Confederate forces. Is he eligible to membership in the Grand Army of the Republic?

B. C. is not eligible to membership in the Grand Army of the Republic, for the following reasons:

1. Article 4, Chapter 1, Rules and Regulations, on eligibility to membership says, "Soldiers and sailors of the United States Army," etc. This implies that the party must be regularly enlisted *and mustered into the service.* This party was never mustered in.

2. Holding a commission is not sufficient without a muster into the service. Opinion 99, March 29, 1879, page 50.

3. Being a quartermaster's clerk does not render a party eligible to membership in the Grand Army of the Republic. Opinion 50, April 25, 1873, page 50.

4. Being a scout does not entitle one to membership, unless the party was enlisted and mustered. Opinion 17, December 5, 1871, page 48.

5. In conclusion, nothing can take the place of enlistment and muster-in to render a person eligible to membership in the Grand Army of the Republic, because there can be no "honorable discharge" without a previous muster-in.

10[18] DECISION 3. L. W.

Applicants for membership must be governed by qualifications in Article 4, Chapter 1. No power vested in any officer to set aside provisions of this Article.

On a question asking the Commander-in-Chief to give a special dispensation to muster an applicant who, being too young to enlist, had been employed in various duties with the army, decided that the applicant must be governed by the qualifications required in Article 4, Chapter 1, Rules and Regulations, and that there was no power vested in any officer to set aside its provisions.

10[19] DECISION 11. L. W.

Applicant must have the proper qualification for membership.

The Department of California presented the question of eligibility of one who served on the "Coast Survey" during the war, as a part of the Atlantic squadron.

Decided, that he must have the qualifications required by our Rules, and that his discharge papers would show the facts.

SERVICE IN STATE REGIMENTS. (See *Notes 20–25.*)

10[20] DECISION 6. L. W.

One who served with a State regiment, and mustered out on a "State discharge," eligible, if otherwise qualified.

On the question presented by Post No. 1, New Orleans, as to eligibility of an applicant who served in the field during the Gettysburg campaign in a Pennsylvania regiment, but not mustered into the service of the United States, who was "in service under the order of United States general officers," and at the close of the emergency was mustered out on a State discharge. Answered, that he was eligible, if otherwise qualified.

10[21] OPINION 426. G. B. S. November 22, 1881.

If the person can be identified as the soldier certified to by the Adjutant-General.

How can a soldier be identified as entitled to membership under Article 4, Chapter 1, not having been mustered into the United States army, and having no discharge?

If the regiment to which he belonged was placed under the orders of United States general officers, a certificate from the Adjutant-General of the State to that effect, and a certificate that he served in that regiment, would be sufficient evidence for an examining committee; provided, of course, that the applicant can be properly identified as the soldier certified to by the Adjutant-General.

10[22] DECISION 3. S. S. B.

A Post cannot properly drop a member from its rolls, who appears in good standing, until the contrary is shown after proper and legal proceedings, as provided by the Rules and Regulations.

A comrade was dropped from the rolls by vote of the Post, on the ground that he was ineligible, and should not have been mustered in.

OPINION 3. C. H. G. November 24, 1885.

H. R., Fifty-eighth Pennsylvania Militia, was mustered in July 6, 1863; mustered out August 1, 1863, by order of the Governor of Pennsylvania. During this brief term of service the regiment to which he belonged was placed under the command of General T. H. Brooks, an officer of the regular army, and at that time in command of the Department of the Monongahela, composed of all that portion of Pennsylvania lying west of Johnstown, a portion of Ohio, and West Virginia. All the troops in that Department were under General Brooks's command, and acted under his orders during the pur-

suit of John Morgan. The question is, Was H. R. eligible to become a member of the Grand Army of the Republic?

Comrade R. was not ineligible to become a member of the Grand Army of the Republic.

"Soldiers and sailors of the United States Army, Navy, and Marine Corps, . . and of such State regiments as were called into active service and subject to the order of United States general officers . . . shall be eligible to membership in the Grand Army of the Republic." Chapter 1, Article 4, Rules and Regulations.

The evidence in this case shows that Comrade R. was a soldier in a State regiment which was called into the service, and was subject to the orders of General Brooks. He was therefore eligible.

The question of eligibility being settled, it is not important to comment upon the processes by which it was sought to drop him.

10[83] Decision 20. L. F.

Service in the organization known as the First Missouri Regiment, Citizen Guards, is not sufficient to render an applicant eligible to membership.

During Price's raid in Missouri in 1864, a body of men known as the First Missouri Regiment, Citizen Guards, was organized for the protection of St. Louis, under an order issued by General Rosecrans, then in command of that place, and served some six or eight weeks doing guard duty in and about the city.

The men received no pay, and when the emergency had passed were simply dismissed to their homes without being given discharges or being mustered out.

The authority of General Rosecrans to issue such order was denied by the United States.

No such organization is known at the Adjutant-General's office, U.S.A., and no record showing its existence or service was ever filed in the office of the Adjutant-General of Missouri.

Is one who served in such organization eligible to membership in the Grand Army of the Republic?

Opinion 20. H. E. T. March 11, 1887.

It has been repeatedly held that muster into the service and honorable discharge are necessary to eligibility.

From the papers filed in the case it appears that whatever form of muster-in there may have been, by virtue of an order from General Rosecrans, whose authority to issue it was denied by the United States government, that no such organization as the First Missouri Regiment, Citizen Guards, is known at the office of the Adjutant-General, U.S.A.; that no record of any kind relative to it was ever filed in the office of the Adjutant-General of the State of Missouri,

and that the organization was never mustered out, nor were its members discharged, but were simply informally dismissed.

I see no ground for holding that this was a "State regiment called into active service," for the State apparently had nothing to do with it.

I am also forced to the conclusion that the order of General Rosecrans, having been unauthorized and disapproved by the United States government, the attempted muster-in was invalid and of no effect.

I therefore advise that the applicant is not eligible.

The remedy for the hardship in this and similar cases must come from the National Encampment.

10 [24] DECISION 3. R. A. A.

Organizations known as "Squirrel-Hunters" having never been mustered into the army, or discharged therefrom, and not having belonged to State regiments called into active service and subject to United States general officers, are not eligible to membership in the Grand Army of the Republic.

Are men known as "Squirrel-Hunters," who served in front of Cincinnati in 1862, eligible to membership in the Grand Army of the Republic?

OPINION 3. D. R. A. October 12, 1889.

When Cincinnati was threatened, in the fall of 1862, by Kirby Smith's army, Governor Todd called upon the citizens of Ohio to arm themselves and go to its defence. About fifteen thousand, armed with squirrel-rifles, shot-guns, etc., responded to the call. They came in company organizations, the State furnishing transportation; but I believe they generally furnished their own rations. At this time Major-General Wright commanded the Department of the Ohio, with head-quarters at Cincinnati. These men, while in the field, were under his orders. General Lew Wallace was in immediate command of the troops in the field. These men, after their arrival, were, by the order of General Wallace, organized into temporary regiments,—but about this I am not positive. They were not, however, mustered into the army, nor did they belong to State regiments. They remained about a week—the scare being soon over—and returned to their homes without suffering loss to themselves or inflicting any upon the enemy, beyond the pillage of a few potato fields and robbing some hen-roosts. Some time after their return home, the Governor of Ohio, as a recognition of their prompt and patriotic response to his call, sent them a printed certificate called their discharge.

Having never been mustered into the United States army, or discharged therefrom, and not having belonged to State regiments called into active service and subject to the orders of the United States general officers, they are not eligible to membership in the Grand Army of the Republic.

10 [25] DECISION 5. R. A. A.

Members of the organization known as "Missouri Home-Guards," who hold an honorable discharge from the Secretary of War, issued in pursuance of the act of Congress, approved May 15, 1886, and who have never borne arms against the United States, are eligible to membership in the Grand Army of the Republic.

Are those who served in the "Missouri Home-Guards," in 1861, and who, under the provisions of the act of Congress, approved May 15, 1886, have received from the Secretary of War an honorable discharge, eligible to membership in the Grand Army of the Republic?

Opinion 5. D. R. A. 1890.

By act of Congress, approved March 25, 1862, it was provided:

First. That the Secretary of War be authorized and required to allow and pay to the officers, musicians, and privates, who have been heretofore actually employed in the military service of the United States, whether mustered into actual service or not, when their services were actually employed by the generals who have been in command of the Department of the West, or the Department of the Missouri, the pay and bounty as in cases of regular enlistment.

Second. That such officers, musicians, and privates, so employed, who may have been wounded or incapacitated for service, shall be entitled to receive the pension allowed for such disability.

Third. That the heirs of those killed in battle, or of those who may have died from wounds received while so in service, shall be entitled to receive the bounty and pay to which they would have been entitled, had they been regularly mustered into service.

By joint resolution of Congress, passed July 12, 1862, the President was directed to appoint a commission to examine all claims arising under the provisions of the act of March 25, 1862, and report to the Secretary of War.

By act of Congress, approved May 13, 1886, it is provided:

That the Secretary of War be and he is hereby authorized and directed to furnish, upon their several applications therefor, a certificate of discharge to each and every member of the Missouri Home-Guards, whose claims for pay were adjudicated by the Hawkins-Taylor Commission, under the act approved March 25, 1862, and the several acts supplementary thereto.

It does not appear from the communication what the character of the organization of the Missouri Home-Guards of 1861 was, whether they were regularly organized State militia or not, but I presume they were independent volunteer organizations, called into service by the generals in command of that Department, to aid in keeping the State of Missouri in the Union during the early period of the war; but it is not necessary to determine in what manner they entered the service. By the several acts of Congress herein referred to, it is plain that the Missouri Home-Guards, although not regularly mustered into the service, did, nevertheless, render services in the United States army between April 12, 1861, and April 9, 1865, and of such recognized value to the government, that they were, so far as pay, bounty, and pensions were concerned, placed on the same footing with the soldiers who were regularly mustered in; and subsequently, by special act of Congress, they were regularly discharged from the army,—such discharge, as it appears from the copy before me, to date from August 10, 1861. This, it would seem, fills the full measure of the requirements for membership in the Grand Army of the Republic,—as to service in the army and an honorable discharge therefrom.

I am therefore of opinion that such members of the Missouri Home-Guards who hold an honorable discharge from the Secretary of War, issued in pursuance of the act of Congress, approved May 15, 1886, and who have never borne arms against the United States, are eligible to membership in the Grand Army of the Republic.

SERVICE IN THE REBEL ARMY. (See *Notes 26–35.*)

NOTE.—A proposition to modify this clause relative to service in the rebel army was presented at the Encampment at Minneapolis. *Journal*, 1884, page 197. It was discussed in the Encampment at Portland, and the proposed amendment rejected. *Journal*, 1885, pages 232, etc.

10[26] OPINION 4. W. W. D. August 11, 1871.

1. Involuntary service in the Rebel Army forms no exception.

1. The case of an applicant for admission to the Grand Army of the Republic, who had been, in the early part of the war, forced into the rebel service, comes directly within the letter and spirit of the second clause of Section 1, Article 4, of Chapter 1, of the Rules and Regulations: "And no person shall be eligible to membership who has at any time borne arms against the United States."

The fact that the service against the Union was involuntary does not constitute this case an exception to a rule so clearly and unreservedly expressed. There were no persons whom the framers of this rule could have contemplated but this very class who served in the Confederate army and afterwards in our own.

Clearly, therefore, the applicant in this case is ineligible.

There may be instances—and the present may be one of them—where this rule works harshly, but it is of far more importance that the loyalty of every member of our Order should be above reproach than that we should omit from our roll a few good men, who showed weakness, at least, if they escape the suspicion of disloyalty.

10[27] DECISION 7. S. S. B.

Service in the Rebel Army by one who was a Slave.

An applicant must have the benefit of the fact that, as a slave, he was stripped of the power and exercise of volition, and hence is relieved from the consequences of an act which was not his but that of his master. He is therefore eligible.

In this case an applicant is reported as having "borne arms" (in the enlarged sense of the term) in the service of the Confederacy, while he was a slave. He afterwards enlisted in and was honorably discharged from the Union army.

OPINION 7. C. H. G. November 27, 1885.

A person made application for membership in a Post who, as a slave, was forced to work on rebel fortifications, as servant to a Confederate officer, for the period of one year, after which time he escaped and enlisted in the Union navy, from which he was honorably discharged, not having borne arms against the United States, but having been forced to work on rebel fortifications.

It has been so often ruled, and the rulings have been so often upheld, that even involuntary service in the Confederate army is a disqualification for mem-

bership in the Grand Army of the Republic, that the question whether or not the rule should be literally upheld, or occasionally turned aside, ought not now to be discussed. (Opinion 136, J. R. C., below, and see the action of the National Encampment, 1885.) But the question here presented is a novel one to me, and I do not think it decided or affected by any of the decisions heretofore made. What are we to consider the meaning of the phrase "borne arms"? I do not doubt that it means any actual military service, and cannot be restricted to carrying a musket, a sabre, or working a cannon. The slave did not bear arms for the Confederacy in the restricted sense, and yet he, as in this case, did "bear arms" within the meaning of the term in its more enlarged sense. But he was a thing,—a chattel. He had no will. He could make no contract. He could not legally marry. He could not control his own children. He was without the power to will to do, or the will to refuse to do. The law—that monstrous outrage upon civilization—was *our* law; that practice was *our* practice. Our courts upheld the infamous idea that the slave had no rights. As a slave he was driven as a dumb beast to work upon rebel fortifications. I hold that for the purposes of this sort of case and this sort of inquiry the slave must have the benefit of the fact that he was stripped of the power and exercise of volition, and hence is relieved from the consequence of an act which the law on both sides said he must obey. And I hold that emancipation, when it came, related back and made the slave a man from his birth, and tore down the idols of the dark days of his enslavement, and purged him of all the acts, or failures to act, which had grown up under the system under which he had lived.

The Supreme Court of Ohio held recently that the emancipation of a slave in 1863, by proclamation, operated back to legitimatize his birth, though his mother and father both died before 1861, and before emancipation. I cannot bring myself to hold otherwise; and if my opinion is not in accord with the law of the Grand Army of the Republic, so much the worse for the law.

I hold that the applicant in this case is eligible to become a member of the Grand Army of the Republic.

10[28] Opinion 114. W. C. January 17, 1880.

Service in the Rebel Army excludes from membership in the Grand Army of the Republic.

A person who, in the early part of the war, was forced into the rebel service, but escaped as soon as possible and subsequently served faithfully in the Union army, desires to become a member of the Grand Army of the Republic. Is he eligible?

Opinion 4 of the Judge-Advocate-General, page 43, decides a parallel case in the negative. If he was forced into the rebel service, and was actually kept there by force until his escape, it would seem to be a suitable case for the National Encampment to grant relief.

10[29] Opinion 136. J. R. C. September 15, 1882.

Service in the Rebel Army, from whatever cause, renders one ineligible to membership in the Grand Army of the Republic.

R. M. J. was impressed into the rebel army in Tennessee in 1861. In the spring of 1862 he deserted, came to Indiana, and immediately enlisted in the

Eightieth Regiment Indiana Volunteers, and served until near the close of the war, when he was discharged on account of wounds received in battle and in line of duty. He claims that he had to enter the rebel army or hang; that he was closely watched, but deserted at the first opportunity. He is a worthy citizen, and the comrades where he resides say as loyal a citizen as lives. Can anything be done for him in the way of admitting him to membership?

Article 4, Chapter 1, page 22, Rules and Regulations, says, very emphatically, "*No person*," etc. No exception is made to the rule. This question has been before the National Encampment ever since 1872. The Judge-Advocate-General, in Opinion 4, page 43, decided that, although the service was involuntary, still it did not constitute the case an exception to the rule, and that the applicant was ineligible. This decision still remains unaltered. I think this the only safe rule, as laid down in Opinion 4, above referred to. It may seem harsh in a case like this; but, if the door is once opened, there is too much opportunity given for unworthy persons to make statements of involuntary service, etc., which, at this late date, could not be controverted even though untrue.

10[30] DECISION 17. L. F.

One who served in the Rebel Army is not eligible to membership in the Grand Army of the Republic.

In this case the applicant, under strong pressure of circumstances, enlisted in the rebel army and served unwillingly until an opportunity offered for escape, when he entered our lines and subsequently served in the Union army. Is he eligible for membership in the Grand Army of the Republic?

OPINION 17. H. E. T. February 15, 1887.

This is a case which appeals very strongly for sympathy, and in which the rule works harshly, but under Chapter 1, Article 4, of the Rules and Regulations, the applicant is clearly ineligible and must be so declared.

10[31] DECISION 20. R. A. A.

One who served in the Confederate Quartermaster's Department is ineligible to membership in the Grand Army of the Republic.

A man mustered into a Post of the Grand Army of the Republic was shown, upon subsequent investigation, to have served in the earlier part of the rebellion in the Confederate Quartermaster's Department. In his affidavit touching such service he makes the following statement:

In 1862,on account of open threats being made on my life, and the expectation of a passage of the Conscript Act, forcing all men into the rebel service between the ages of eighteen and forty-five, I secured a position in the Quartermaster's Department as citizen clerk. This service began April 5, 1862, and I think I was with General Warden's division and General Beauregard's corps.

I remained with them about eleven months, when, through the interest of a personal friend, then acting quartermaster, I was given a pass through the rebel lines and never returned. This was in the latter part of 1863. On the 3d of October, 1864, at Rock Island, Illinois, I enlisted as sergeant in Company A, Second Regiment United States Volunteers, and was discharged from the service November 7, 1865.

Upon this statement of facts, the Judge-Advocate of the Department, to whom the question of C.'s eligibility to membership in the Grand Army of the Republic was referred, holds that he is eligible, for the following reasons:

First. Because the service performed by the said C. was not such service as to bring it within the meaning of "bearing arms against the United States," for the reason that he did not join the rebel army, and never took any oath of allegiance to the Confederate government.

Second. Because the service rendered by him was a forced service, involuntary.

This case was referred by the Commander-in-Chief to the National Encampment at Boston, 1890, which sustained the Opinion of the Judge-Advocate-General.

Opinion 20. D. R. A. 1890.

I cannot agree with the conclusion of the Judge-Advocate of the Department. The term "bearing arms against the United States" must, I think, be held to include any service rendered to the Confederate government, whether such service was rendered as a soldier in the army or as an employé in any of its departments. And every person who in any manner aided such government, either in a civil or military capacity, no matter whether they took the oath of allegiance to such government or not, was, while engaged in such service, bearing arms against the United States. That such service, whether rendered voluntarily or involuntarily, is a bar to membership in the Grand Army has been so repeatedly decided and approved by National Encampments that it should be considered settled, and not open to further discussion.

Opinion 4, page 43, Blue-Book.
Opinion 17, page 45, Blue-Book.
Decision 17, page 47, Blue-Book.

I am therefore of opinion that the said P. J. C. is not eligible to membership in the Grand Army of the Republic. That he was wrongfully mustered in, and that his name must therefore be stricken from the roll of such Post.

10 P

Decision 2. R. A. A.

The action of a Post in admitting as a member one who has served a short time as a drummer in the Confederate Army, from which he deserted and afterwards joined the Union Army, was null and void.

In the early part of the war, C. served for a short time in the Confederate army, from which he deserted, and on May 30, 1862, enlisted in the Union army, in which he did faithful service until he was discharged therefrom June 30, 1865. With this record, a Post admitted him to membership.

OPINION 2. D. R. A. 1890.

Any service in the rebel army, no matter what may have been its character or duration, renders the person who performed it ineligible to membership in the Grand Army of the Republic. The action, therefore, of the Post, in admitting C. to membership, was null and void, and his name should be stricken from the roll of the Post.

1033 DECISION 4. L. F.

Service in the Rebel Army excludes from membership in the Grand Army of the Republic.

L. M., in 1861, belonged to a company known as the "Swiss Rifles," organized in Memphis, Tennessee, and was sworn into the service of said State for one year. When Tennessee left the Union his company became part of the Fifteenth Regiment Tennessee Volunteers (rebel), and he remained with it until the expiration of his term of service. Shortly after that he left the South, entered the Union lines, and on May 30, 1862, enlisted in Company G, Forty-sixth Regiment Ohio Volunteers, and served with the regiment till the close of the war, attaining the rank of captain. Is he eligible to membership in the Grand Army of the Republic?

OPINION 4. H. E. T. October 23, 1886.

The long service in the Union army proves undoubted loyalty, and appeals most strongly to the sympathies; but it is evident from the statement submitted that the applicant has "borne arms against the United States," and under the organic law of our Order must be declared ineligible.

1034 DECISION 17. J. P. R.

Service in the Confederate Army renders applicant ineligible.

One who has served in the Confederate army, whether voluntarily or involuntarily, is ineligible to membership in the Grand Army of the Republic. If, by any means, he gains admission to a Post, this does not make him a member. As soon as the fact of his ineligibility is discovered, he should be dropped from the roll and excluded from the meetings. No action of the Post is necessary; but, the fact appearing, his election and muster are simply void.

1035 DECISION 7. R. A. A.

Having once borne arms against the United States, such person is not eligible to membership in the Grand Army of the Republic.

A. B., in the spring of 1861, was engaged in business in Texas. Being of Northern birth and education, he would not join the rebel army in any branch of the service in which he would necessarily swear away his allegiance to the United States. No occupation offering at that time, he took employment in

the Confederate Quartermaster's Department at San Antonio, Texas, and remained in such service from May, 1861, to March or April, 1862, when he escaped and made his way to New Orleans, and then shipped on board of the United States steamer Richmond. He remained in that vessel until she went out of commission, in 1863, when he was discharged. Is he eligible to membership in the Grand Army of the Republic.

Opinion 7. D. R. A. 1890.

Article 4, Chapter 1, of the Rules and Regulations, provides that—

No person shall be eligible to membership who has at any time borne arms against the United States.

It has been repeatedly decided that service in the rebel army, even though it was involuntary, disqualifies a person for membership in the Grand Army of the Republic.

As we have said in a former opinion: it makes no difference what the character or the term of the service may have been; service of any kind, either as a soldier in the Confederate army or as an employé in any of the departments of the Confederate government, was, within the meaning of the Rules and Regulations, bearing arms against the United States.

I am therefore of opinion that A. B is not eligible to membership in the Grand Army of the Republic.

GENERAL DECISIONS.

10[36] Opinion 17. W. W. D. December 5, 1871.

Scouts in the Union Army not necessarily eligible to membership.

Is a person who served as a scout in the Union army, during the entire War of the Rebellion, eligible for admission into the Grand Army of the Republic?

I do not understand that scouts were generally attached to the army for definite terms of enlistment, or that they were actually mustered into and out of service in such a way as to make them strictly a part of the army. Civilians were usually employed for special services, and then paid and discharged. Sometimes enlisted men were detailed or volunteered for such work. In the latter case, of course, no question could arise as to their eligibility to membership. But in case of civilians who were employed temporarily as scouts, or who were hired as detectives at home, I cannot see that our Regulations admit them.

The matter is perhaps of sufficient importance to be laid before the National Encampment for their construction of the law. Until they take action, I would advise that such applications be not received.

10[37] Opinion 31. W. W. D. April 15, 1872.

A woman who served as daughter of a regiment does not come within the class of persons who are eligible to membership in the Grand Army of the Republic. Action of a Post in admitting such a one would be illegal and void.

The question is proposed whether a woman who served with the First Regiment Rhode Island Detached Militia, as daughter of the regiment, and who received a discharge in ordinary form from the service as daughter of the regiment, and who was afterwards received as a member of a Post of the Grand Army of the Republic, was lawfully mustered into our Order.

I do not know of any position in the army, according to the Regulations, described as daughter of the regiment. Our Regulations prescribe as a condition for membership that the applicant shall have been a soldier or sailor in the army, navy, or marine corps of the United States, etc. Whatever a daughter of the regiment may have been, I do not understand that she was a soldier in the United States army. She may have done good service in the suppression of the rebellion, as nurses in hospitals, and agents of the Sanitary Commission and Christian Commission, and many patriotic citizens at home did; but as she does not come within the classes of persons whom our Regulations make eligible to membership, I think the action of the Post admitting her was illegal and void.

The discharge which was given her, I suppose, was a complimentary testimonial to her patriotism, rather than a certificate that she had been technically in the service.

10[38] Opinion 47. W. W. D. April 11, 1873.

Officers of Revenue Service not eligible.

Is an officer in the revenue service, who served during the war in that capacity, and part of the time on his vessel, in conjunction with vessels of the navy, in suppressing blockade running, eligible to membership in the Grand Army of the Republic?

The Regulations admit only those who served in the army, navy, or marine corps during the war. I do not think that either of these classes can be construed to include the revenue service. The latter is a part of the Treasury Department, and its officers are merely the armed officers of customs. The regulations for the collection of revenue and the prevention of smuggling, etc., are enforced by them on the seas, exactly as they are by custom-house officers and United States marshals on shore. The fact that a revenue vessel is detailed for extraordinary duty during a time of urgent necessity does not alter the relation of its officers to the government or attach them to the navy.

10[39] Opinion 97. W. C. January 21, 1879.

Service in Revenue Marine does not render one eligible.

Can one who served during the late war in the United States revenue marine become a member of the Grand Army of the Republic?

Article 4, Chapter 4, Rules and Regulations, confines membership to those honorably discharged, after serving during the late rebellion, from the United States army, navy, or marine corps, distinct and well-defined and well-understood branches of the service, and they do not, in my judgment, include the revenue marine, still another and distinct branch of the government service. Therefore my answer would be in the negative.

10[40] DECISION 5. L. W.

One who served in Revenue Marine Service not eligible.

On the question presented by the Department of Maryland as to eligibility of an applicant who had served in the revenue marine service as an enlisted man, and, under the orders of the Navy Department, in blockade service during the war, I decided that he was not eligible, referring to Opinion 47 of Judge-Advocate-General, April 11, 1873, page 49.

10[41] OPINION 6. W. W. D. September 7, 1871.

Paymaster's Clerk in the Navy is eligible to membership.

I am of the opinion that a paymaster's clerk in the navy is a sailor of the United States navy in the intent of Section 1, Article 4, Chapter 1, of the Rules and Regulations.

He is appointed by the paymaster, subject to the captain's approval, and is then sworn or mustered into the service, and receives a warrant which assigns him definite rank. If he leaves the ship without permission, he is a deserter, and is liable to punishment as such. He is borne on the ship's roll and is paid by the government, and has a station and a command given him in time of action. I consider him as eligible to membership as an engineer or assistant in the navy, or as a hospital steward in the army. When his cruise is over he receives a discharge; so that he has been in the service, subject to regulations, liable to command men in action, and in every way entitled to be associated with those who served in other capacities during the war.

10[42] OPINION 50. W. W. D. April 25, 1873.

Clerk to an Army Paymaster not eligible.

Opinion 6, rendered September 7, 1871, from this office, is not intended to apply to the case of a clerk of an army paymaster. I do not think that such service renders a person eligible to membership in the Grand Army. None of the reasons assigned for Opinion 6 apply to his case. He is universally considered a civilian. He wears no uniform; is not mustered into the service; has no command, and is never ordered into action; is liable to be discharged at any time, or can leave without becoming a deserter. He is in a similar position to that occupied by a clerk in the Quartermaster's Department, the Ordnance Bureau, or any government office. In a vessel of the navy every person on board must participate in an engagement, and consequently every one is assigned some post in action. A large number of persons connected with the army, more or less remotely, are required, by their duties in relation to property in their charge, to keep out of action. If the word "soldier," in Article 4, Section 1, Chapter 1, of the Rules and Regulations, has any significance, it seems to me to exclude this class of persons.

10[43] OPINION 99. W. C. March 29, 1879.

Contract Surgeon not eligible.

An applicant for membership to the Grand Army of the Republic was a contract surgeon, afterwards commissioned by the President and confirmed by

the Senate, but he never accepted commission, and never was mustered into service. Is he entitled to membership?

Clearly not, for he cannot be said to have been honorably *discharged* from the United States army, navy, or marine corps. (See Article 4, Chapter 1, Rules and Regulations.)

10 [44] OPINION 104. W. W. B. September 25, 1879.

Woman not eligible. No Honorary Membership.

A woman who rendered important service to the government as bearer of despatches, and in procuring information within the rebel lines, and who, in performing such service, suffered much and made great sacrifices, and who was arrested as a spy and barely escaped a public execution, desires to become an honorary member of a Post of the Grand Army of the Republic. Is she eligible?

No such membership is known to the Order. The National Encampment has never provided for honorary membership. None but soldiers and sailors who served during the rebellion are eligible to membership.

10 [45] DECISION 1. R. B. B.

Surgeon of a Board of Enrolment not eligible.

Is the surgeon of a board of enrolment eligible to membership in the Grand Army of the Republic.

No. The position of surgeon of a board of enrolment was purely a civil one; the holder thereof was not mustered into the active military service of the United States.

10 [46] DECISION 26. J. P. R.

A member of Company E, First Regiment of Organized Employés of the Quartermaster's Department, Washington, D.C., is not eligible to membership in the Grand Army of the Republic, such organization not being a "State regiment," nor mustered into the military service of the United States.

10 [47] DECISION 21. L. F.

The fact of sentence to State's prison, followed by a pardon, does not render an applicant ineligible to membership, and a Post may admit him if they consider him suitable.

A party having been convicted, some ten years ago, of a crime, was sentenced to State's prison, and subsequently pardoned.

His military record being correct, does the simple fact of such sentence disqualify him from becoming a member of our Order?

[Chapter 1.—Article 4.]

OPINION 21. H. E. T. March 12, 1887.

There is nothing to prevent a Post receiving and acting upon an application from this party.

If they consider him a suitable person to become a member, they may elect him, otherwise they should reject him.

10 48 DECISION 14. R. A. A.

West Point Cadets eligible.

Any one who served in the Cadet Corps at West Point between April 12, 1861, and April 9, 1865, was a soldier serving in the United States Army for the suppression of the Rebellion, and such a person having been honorably discharged from such service is eligible to membership in the Grand Army of the Republic.

B. was a cadet in the United States Military Academy, at West Point, during the late war; he was discharged therefrom as a cadet on account of injuries received at the Academy. He never held any position in the United States service during the War of the Rebellion, except as a cadet at the Military Academy. Is he eligible to membership in the Grand Army of the Republic?

The Department Commander, upon the advice of his Judge-Advocate, decided that B. was not eligible. The Judge-Advocate, in his opinion, after reciting the oath which each cadet has to take, and referring to Section 2323, Revised Statutes, U.S., and to Article 4, Chapter 1, of the Rules and Regulations, concludes as follows:

It will be observed that the Cadet Corps is not included in the branches of the service above referred to. I am therefore of opinion that no member of the corps of cadets, even had he served (merely as a member of the corps of cadets) between the dates above mentioned in the war for the suppression of the rebellion, would be eligible to membership in the Grand Army of the Republic.

From this opinion the Post appeals to the Commander-in-Chief.

OPINION 14. D. R. A. 1890.

It appears that the decision of the Department of the Potomac is based on the fact that the eligibility clause of the Rules and Regulations does not especially mention the Cadet Corps as one of the classes entitled to membership in the Grand Army of the Republic. It is true that the United States statutes, in referring to the cadets of West Point Military Academy, denominate them the "Cadet Corps." It is also a fact that the statutes refer to the Engineer Department of the army as the "Engineer Corps;" the Medical Department as the "Medical Corps;" the Pay Department as the "Pay Corps;" the Ordnance Department as the "Ordnance Corps," and the Signal Service Department as the "Signal Corps." (Sections 1474, 1475, 1476, Revised Statutes, U.S.)

None of these corps are specifically mentioned in the eligibility clause of the Rules and Regulations. If, therefore, the members of the Cadet Corps are

ineligible because they are not specifically therein referred to, it would follow that the Engineer, Medical, Pay, Ordnance, and Signal Corps would, for the same reason, also be ineligible. The Rules and Regulations, in defining who are eligible for membership in the Grand Army of the Republic, specify three distinct classes, (1) "soldiers of the army," (2) "sailors of the navy or marine corps," (3) "members of such State regiments as were called into active service and subject to the orders of United States general officers."

The term "soldiers of the army," in the Rules and Regulations, is used in its broadest sense, and is intended to apply to all branches of the service of the army. It makes no distinction as to rank, nor does it define the character of the service or where it was performed. It is only necessary, then, in determining this question, to inquire whether a cadet in the Military Academy at West Point is actually serving in the army of the United States. He is appointed by the President, and is required to take the following oath:

I, A. B., do solemnly swear that I will support the Constitution of the United States, and bear true allegiance to the national government; that I will maintain and defend the sovereignty of the United States, paramount to any and all allegiance, sovereignty, or fealty I may owe to any State, county, or country whatsoever; and that I will at all times obey the legal orders of my superior officers, and the rules and articles governing the armies of the United States. (Section 1320, Revised Statutes, U.S.)

As such cadets they are under the command of United States officers, sworn to obey their commands, and subject to military discipline for violation of any of the rules and articles governing the armies of the United States.

Section 1323, Revised Statutes, U.S., provides that "Cadets shall be subject at all times to do duty in such places and on such service as the President may direct."

No other branch of the United States army is required to do more.

We find that the relation of the West Point cadet to the United States army has been fully settled in two recent cases decided by the United States Supreme Court.

In the case of the United States *vs.* Morton, the court says:

But an examination of the legislation of Congress shows that the cadets at West Point were always a part of the army, and the service as a cadet was always actual service in the army. (112 U. S. R., page 1.)

In the case of the United States *vs.* Watson, the court affirms the foregoing opinion in the following language:

That cadets at West Point have always been a part of the army, and that service as a cadet was always actual service in the army, has been settled by the decision of this court in the case of the United States *vs.* Morton. (130 U. S. R., page 80.)

If, then, the service of the cadets at West Point during the period covered by the Rules and Regulations was actual service in the army, and these decisions of the Supreme Court of the United States clearly and fully so hold, they must be considered to have served as soldiers of the United States army for the suppression of the rebellion, and come within the meaning of that term, as used in our Rules and Regulations. I am therefore of opinion that one who served in the Cadet Corps at West Point, between April 12, 1861, and April 9, 1865, was a soldier serving in the United States army for the suppression of the rebellion, and such person, having been honorably discharged from such service, is eligible to membership in the Grand Army of the Republic.

10* DECISION 16. R. A. A.

Provost Marshals appointed by the President under Act of Congress approved March 3, 1863, and who served as such between April 12, 1861, and April 9, 1865, and who were honorably discharged, are eligible to membership in the Grand Army of the Republic.

E. D. was, on the 30th day of April, 1863, appointed provost marshal of the Fourth District of Maine, with the rank of captain of cavalry in the service of the United States, and on the 10th day of October, 1865, he was discharged, the following being a copy of the discharge:

WAR DEPARTMENT,
PROVOST-MARSHAL-GUARDS' BUREAU,
WASHINGTON, D.C., October 10, 1865.

CAPTAIN,—Your services being no longer required by this Bureau in consequence of suspension of recruiting and drafting, by the direction of the President you are hereby honorably discharged from the service of the United States, to take effect on the 31st inst.

Very respectfully, etc.,
JAMES B. FRY,
Provost-Marshal-General.

OPINION 16. D. R. A. 1890.

By the act of Congress approved March 3, 1863, the President was authorized to appoint for each Congressional District of the United States a provost marshal, with the rank, pay, and emoluments of a captain of cavalry, such officer to be subject to the orders of the Provost-Marshal-General.

By a subsequent act of Congress it was provided that the provost marshals should receive pensions for physical disabilities resulting from their service as such. These officers were considered and treated as belonging to the army of the United States. They were duly mustered into the army, were subject to the orders of the President and the War Department, and liable to court-martial for misconduct. Many of them performed service in localities where military operations were being constantly carried on in the field, and at the close of the war, when their services were no longer required, they were regularly discharged.

I am therefore of opinion that provost marshals appointed by the President under the act of Congress approved March 3, 1863, and who served as such between April 12, 1861, and April 9, 1865, and were honorably discharged, are eligible to membership in the Grand Army of the Republic.

CHAPTER II.

ARTICLE 1.

POSTS—FORMATION.

11* Application for Charter.

SECTION 1. A Post may be formed by the authority of a Department Commander, or of the Commander-in-Chief (where no Department organization exists), on the application of not less than ten persons eligible to membership in the Grand Army of the Republic; and no Post shall be recognized by the members of the Grand Army of the Republic unless acting under a legal and unforfeited charter.

See Section 1, Article 1, Chapter 5, paragraph 94.

11[1] OPINION 77. W. C. October 24, 1877.

Commander-in-Chief cannot grant a "roving charter." Posts must be located.

Certain members of the Grand Army of the Republic, belonging to the regular army, request a charter for a Post, independent of any Department, the charter to operate and the Post to be located in any State where the regiment to which they belong may be stationed for the time being; or, in other words, that they may be granted a "roving charter;" and the question is asked, Has the Commander-in-Chief the right to grant such request?

Article 3, Chapter 1, Rules and Regulations Grand Army of the Republic, would seem clearly to prohibit the granting of such request, for it states distinctly that the several constituted bodies of the Grand Army of the Republic *shall* consist: 1. Of precinct organizations, to be known as *Posts of a Department.* 2. State organizations, to be known as *Departments.* 3. A national organization, to be known as a *National Encampment.* The request contemplates a body differently constituted, and is clearly in violation of the rule.

11[2] DECISION 6. S. S. B.

Posts in Foreign Countries.

There is no territorial limitation upon the power of the Commander-in-Chief to authorize the organization of Posts of the Grand Army of the Republic. He may sanction their organization within a foreign country, and attach them to any Department under his jurisdiction.

[Chapter 2.—Article 1.]

12 Surrender of Charter.

SECTION 2. No charter shall be surrendered by any Post so long as ten members thereof demand its continuance, nor unless a proposition to surrender the charter shall have been made at a stated meeting at least four weeks before the time of action, and due notice given to every member of the Post.

See Section 3, Article 1, Chapter 5, paragraph 95.

Note 11[8] continued.

OPINION 6. C. H. G. November 27, 1885.

The Commander-in-Chief addressed a letter to me in substance stating that he had received a number of letters relative to the organizing of Posts of the Grand Army of the Republic in the Dominion of Canada. From the correspondence it appears that there are a number of ex-soldiers both in Toronto and London, Canada, who are anxious to obtain a charter to form a Post, and the questions submitted were:

1st. Whether ex-soldiers or sailors, eligible to become members of the Grand Army of the Republic, but residing in territory not within the United States or its jurisdiction, can be authorized under Section 1, Article 1, Chapter 2, of the Rules and Regulations, by charter to organize a Post, such Post to be attached to some Department adjacent thereto in the United States.

2d. If a charter for such purpose can be granted, will the matter of attachment be discretionary with the Commander-in-Chief?

Comrades eligible to become members of the Grand Army of the Republic, wherever found, have a right to the benefits of the organization, and to become members thereof.

Article 1, Chapter 2, Section 1, provides: "A Post may be formed by the authority of a Department Commander, or of the Commander-in-Chief (where no Department organization exists), on the application of not less than ten persons eligible to membership in the Grand Army of the Republic." In the case suggested there is "no Department organization" within the Dominion of Canada, and the question submitted is, Can the Commander-in-Chief authorize the institution of a Post and muster of recruits? I do not hesitate to answer this question in the affirmative. There is no territorial qualification to the Commander-in-Chief's power to authorize the organization of Posts. Wherever ten or more comrades live they may apply for authority to organize a Post; and if they are beyond the limits of any Department, they may apply to the head of the organization for such authority as he has.

The Post being authorized, the next question is, To what organization shall it be attached? The Commander-in-Chief is the supreme power in this behalf, and may attach it to any Department under his jurisdiction, and in so attaching a Post he exercises a discretion which cannot be reversed save for manifest abuse of it, and then only by the National Encampment.

The installation of a Post in Honolulu, which was attached to the Department of California, is a precedent supporting this opinion, in so far as it shows that comrades outside of the United States have been accorded the right to

13 Reorganization.

SECTION 3. A Post disbanded, whether before or since the annual session of the National Encampment in 1869, may be reorganized with its original name and number, provided that these shall not have been appropriated. In such reorganization a new charter shall be issued, bearing the names of the new as well as the old members petitioning therefor.

14 Rank of Posts.

SECTION 4. The rank of Posts shall be determined by the date of the charter under which they are acting.

Note 11[2] continued.

have a Post organization outside of the jurisdiction of an existing Department.

See Address of Commander-in-Chief, *Journal*, 1886, page 41.

11[3] DECISION 19. R. A. A.

There is no law, and there seems to be no valid objection to granting a charter to organize a Post in Canada, where there are a sufficient number of old soldiers of the Union Army domiciled there to properly maintain it, who, notwithstanding their residence there, still hold their allegiance to the United States.

The granting of such charters is purely discretionary with the Commander-in-Chief.

OPINION 19. D. R. A. March 29, 1890.

It has been decided that the Commander-in-Chief has authority to grant charters to organize Posts of the Grand Army of the Republic in foreign countries. The exercise of this power is purely a discretionary one. Past Commander-in-Chief Burdett, during whose administration this opinion was given, alluded to it in his address to the Encampment, at San Francisco, in the following language:

The subject of Opinion No. 6, requires remark. Suggestions from several sources entitled to respect were made to Head-quarters in the interest of comrades residing in the Dominion of Canada, who desired the organization of Posts of the Grand Army within that jurisdiction. Upon the examination of our law on the general subject, notwithstanding the precedent already set within the territory of the King of the Sandwich Islands, by the establishment of a Post at Honolulu, I was not clear that the authority was sufficient. It also seemed to me that a grave question of policy was involved. The question of authority I submitted to the better judgment of the Judge-Advocate-General. His affirmative opinion I accept as removing all doubts in that respect, but the question of policy remains unsolved. I have taken no action,

believing the matter to be of sufficiently grave import to entitle you to make the decision.

There is no country, save our own, within which a disbanded army, yet strong enough for conquest, could be permitted to band itself together to meet in secret conclave, and to pledge obedience to its own laws. Whether the organization in a foreign country of an integral part of such a force—to meet under, and pledge undying fealty to the flag and government of another people—might not be misunderstood, and excite suspicion, jealousy, and even hostility, seems to me worthy of consideration.

I am unable to see how the meeting together for fraternal purposes, in a foreign country, of a few of the veterans who served in the army of the United States for the suppression of rebellion, and who happen to be domiciled in such country, could in any manner excite either prejudice, jealousy, or hostility on the part of such government or its people. Certainly we ought not to assume that it would. One of the chief tenets of our society is loyalty, and the man who is loyal to his own country will always yield respect and obedience to the lawful authority of any other country in which he may be a sojourner. Only comrades who are merely domiciled in a foreign country can rightfully be members of the Grand Army of the Republic, for the obligation they take is in reality a very strong oath of allegiance to the United States government. I can see no reason why the organization of a Grand Army Post in a foreign city should excite any more suspicion, jealousy, or hostility, than in the American residents of a foreign city meeting together and celebrating the Fourth of July. Were I Commander-in-Chief, and satisfied that there were a sufficient number of old soldiers of the Union army to properly maintain a Post, residing in Montreal or any other city in the Dominion of Canada, who, notwithstanding their residence, still held their allegiance to the United States, revered its Constitution, and loved its flag, I would grant them a charter to organize a Post.

11[4] Decision 5. J. P. R.

Change of Location of Posts.

There is no provision in the Rules and Regulations for changing the locality of a Post from one town to another, and the Commander-in-Chief has no power to authorize such transfer.

Opinion 5. W. G. V. March, 1888.

The question in this case is whether the locality of a Post of the Grand Army of the Republic, as named in the charter, may be changed, and upon what proceedings. Authority is conferred upon Department Commanders to issue suitable charters to all Posts organized in their respective Departments. (Section 1, Article 6, Chapter 3, Rules and Regulations.) This power rests in the Commander-in-Chief where no Department organization exists. (Section 1, Article 1, Chapter 2.)

Posts are designated as "Precinct Organizations" in Section 1, Article 3, Chapter 1.

In 1877 it was ruled, by the then Commander-in-Chief, pursuant to the Opinion of Judge-Advocate-General Cogswell (11[1] Blue-Book), that the Commander-in-Chief could not grant a "roving charter," and that Posts must be located. Judge-Advocate-General Taintor held (Opinion 29, 30[3], Blue-Book)

that unless the charter expressly requires the Post to exercise its powers in a particular section of the town, its meetings may be held at any point in the limits of the township, and some of the meetings at one point and the rest at another. These are the only rulings or opinions which I find bearing even remotely on the point of inquiry in the case. The Rules and Regulations confer no express authority upon Department Commanders to change the locality of a Post as expressed in the charter. It seems to me that it would be wise if such power was conferred, because it is easy to perceive that there might be such change in circumstances as would make a change of locality a matter of convenience and advantage; but, as stated, it is not expressly conferred, and I do not think it is impliedly conferred.

If it was intended that the Department Commander should exercise such authority, it naturally would have been a subject of detailed regulation showing the circumstances under which a change should be allowed. The change could be accomplished practically by a surrender of the charter, and reorganization. (Sections 2 and 3, Chapter 2, Article 1). But there can be no surrender if ten members desire the continuance of the Post, which shows how carefully the individual and minority rights of members are guarded.

Section 1, Article 6, Chapter 3, Rules and Regulations, after prescribing the duties of the Department Commander, then says, "and perform such other duties as are incumbent on officers of like position." This is the extent of the general powers conferred, and falls short of meeting the case at bar.

It might seem, upon first impression, that the Department Commander might authorize a change of location of a Post from one municipality to another under the same circumstances in which he could accept a surrender of a charter and authorize a reorganization. But while that would be a strong reason why such power should be vested in the Department Commander, and would indeed be a strong circumstance in favor of such construction of doubtful language in the Regulations, the trouble is that there is no provision that seems to touch the subject of such change of locality. I think it is a matter that has not been contemplated in any legislation of our Order.

Our Regulations, as before stated, define Posts as "Precinct Organizations." A precinct is defined as a district within certain boundaries; a minor territorial or jurisdictional division —*Webster's Dictionary.*

As we have in our Order three kinds of organizations,—viz , the Precinct, the State, and the National,—it follows that the first-named must have a territorial limitation less than the State, and it is plainly to be of municipal character,—that is, either the town, the city or village, or the county. The terms of the charter in question are not stated, but I assume that it located the Post in one of these territorial divisions or municipalities. Upon that supposition I have come to the conclusion, as indicated, that the location within the municipality named in the charter is a fixture until relief is afforded by the National Encampment.

115 DECISION 2. W. W.

Department Commanders cannot change the location of a Post after a charter has been granted, fixing its abode.

A Post desires to change its location from Fort Bayard to Fort Wingate. These places are several hundred miles distant from each other, but they are both in the Department of New Mexico. Can such change of location be lawfully made?

ARTICLE 2.

ADMISSION TO MEMBERSHIP.

15* Application.

SECTION 1. Every application for admission to membership shall be in writing, and shall give in detail, upon the blanks furnished by the National Head-quarters, the applicant's age, birthplace, residence, occupation, date and rank when entering the service, and his rank at the time of his discharge (or if still in the service, his present rank), the date and cause of his discharge, the company and regiment or ship to which he belongs or belonged, the length of time he served; if wounded, when, in what engagement, in what manner and degree, and the fact of any previous application, and to what Post it was made (1–6).

See *Eligibility*, and Decisions thereon, paragraph 10.

Note 11⁵ continued.

OPINION 2. J. B. J. November 12, 1888.

I think not. Although the Rules and Regulations are silent on the subject, yet the whole theory of the organization of the Grand Army of the Republic is that each Post shall have some fixed location. It may not be more definite than that of the name of the town in which it is situated, yet to that extent it is fixed and definite. The charter should fix its abode, and no officer should be permitted to change its terms. It has been decided, very wisely, as I think, that the Department Commander cannot grant a charter for a "roving Post," thereby permitting it to change its location from place to place and from Department to Department at its pleasure. After the charter has been granted, fixing its abode, certainly there can be no power to change the location of the Post from place to place, thus practically making it a "roving Post." An officer cannot do indirectly what he cannot do directly. It is my opinion that the change desired cannot be made.

15¹. NOTE.—Application for membership must be made on the blank form furnished by National Head-quarters.

This application requires, in addition to the facts above prescribed, the declaration that the applicant has not been convicted of desertion or any other infamous crime. The words, "by court-martial," formerly in this sentence in the application, were stricken out by the National Encampment at Minneapolis, 1884, so that conviction of crime by *any* tribunal must be stated for the information of the Post. (See *Note* to paragraph 10.) R. B. B.

Failure to state all the facts required on the application may render an election and muster void.

152. OPINION 122. W. W. B. April 10, 1880.

Applicant for membership should be admitted under his true name.

An applicant for membership in the Grand Army of the Republic, who enlisted in the army, and was borne upon the rolls of his regiment under the name of Donavan, but who claims that his real name is O'Donnell, desires to be mustered under his true name.

Can he be admitted under any other name than the one by which he was borne upon the muster-rolls of his regiment?

If otherwise eligible, he may become a member of the Grand Army of the Republic, and should be admitted under his true name.

Errors in the names of recruits were not infrequent. Such errors should not be propagated but corrected.

The matter of identity is a question of fact to be determined by the Post, after careful investigation, and upon satisfactory testimony.

153 DECISION 2. R. B. B.

Application under false name.

A comrade joins the Grand Army under an *alias*, having no papers to show that he had enlisted or served under this name. What is his position in the Grand Army of the Republic?

The application for membership must be in the real name of the applicant. An applicant who obtains admission to the Grand Army of the Republic under an assumed name practises a deception that may properly be made the subject of charges.

NOTE.—This case differs from those presented relative to men who enlisted and served in the army or navy under an assumed name. (See *Note 10*[11], page 33.)

154 OPINION 72. W. W. D. March 22, 1876.

1. Eligibility to Membership.—An applicant rejected by one Post, and who, before the expiration of the time fixed by the Regulations, applies for membership, and is there elected and mustered, is illegally elected and mustered, and should be dropped from the rolls.

2. Two things are necessary to become a member of the Grand Army: Eligibility to membership under the Regulations, and he must be duly elected.

3. Regulations.—The National Encampment alone has power to alter or amend.

4. A member once admitted, though unfit, cannot be stricken from the rolls except for some subsequent misconduct.

5. Acting within the Regulations, the muster of a recruit would conclude the Post on all questions left by the Regulations to the Post.

[Chapter 2.—Article 2.]

F. C. F. applied for admission to Post No. 32, Department of Massachusetts, and was rejected. He then applied to Post No. 82, and was accepted without the consent of Post No. 32. He did not state in his application to Post No. 82 that he had made a previous application. From Post No. 82 he was regularly transferred to Post No. 125, and the fact transpiring that he had been improperly admitted to Post No. 82, he was dropped as never having been a member of the Grand Army of the Republic. The Department Commander sustained the action of Post No. 125, holding that the initiate fraud or error vitiated the subsequent proceedings.

From this decision F. C. F. appeals.

The provision of Chapter 2, Article 2, Section 5, of the Rules and Regulations, that a rejected candidate shall be forever after ineligible for admission to any other Post of the Grand Army of the Republic, without the consent of a two-thirds vote of the Post rejecting him, is in terms absolute and unqualified.*

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* The Rules in this respect have been changed. An applicant rejected can, after the expiration of six months, make application to any other Post. (See *Note 19*[1], page 73.) R. B. B.

Can a Post by its action or omission waive the application of the rule in a particular case? The appellant claims that Post No. 82 did so, because one of its members informed him that he need not comply with the Regulations. The principle of the organization of our Order is subordination of Posts to Departments, Departments to the National Encampment, and the whole Order to written Regulations, which form our Constitution. These Regulations can only be altered, amended, suspended, or repealed by the National Encampment, not by Posts, whose powers are limited by the Regulations themselves. Nor can any comrade, on behalf of the Post, lawfully do what the Post itself has not the right to do.

The applicant, therefore, was not lawfully proposed and elected. But the case involves the further question, how far the unlawful act is void.

Two things are necessary for the admission of a candidate to the Grand Army. He must be eligible to membership under the express provisions of the Regulations, and he must be elected by a duly-authorized body. If not eligible, the Post has not the right to muster him, though they may unanimously vote to admit him. Certain general qualifications are stated in the Regulations; the peculiarities of character of the applicant are left to the investigation of the committee and the decision of the ballot. If an applicant who comes within the general requirements of the Regulations is elected by a Post, and it is afterwards discovered that he had been guilty of crime, or is of such a temper and disposition as to unfit him for the society of gentlemen, the action of the Post, as a general rule, must stand, because they have decided the matter which lay in their discretion.

Even in this case, if the Post acted on mistaken information, and it was discovered before muster, their action might, in some circumstances, be reversed. (See Opinion 57, October 29, 1873, 18[6]). In such a case the comrade, if once mustered, though unfit for membership, would remain a member, and could not be stricken from the roll except for some subsequent offence. In brief, I

should hold that the muster of a recruit would conclude the Post upon all questions left by the Regulations to the Post to decide.

In the present case the Post have not acted injudiciously upon a question submitted to them, but they have taken jurisdiction where the Regulations give them none. Their action in this case was required to be concurrent with that of the Post which first rejected the candidate.

If they had the means of knowing the fact of the previous rejection, as it seems they should have had in their files of General Orders, or by insisting upon the proper filling of the blanks in the application, they were guilty of carelessness and disregard of their obligations to the Order. Yet they cannot bind the Order of which they form a part, or waive the rights of Post No. 32, to whose jurisdiction the candidate first voluntarily subjected himself.

The action of the Post, therefore, in admitting the appellant was void, and the National Encampment only can provide any remedy for the case. If it were an instance where the vital interests of the Order were at stake, it may be that a Commander-in-Chief, in the intervals between the sessions of the Encampment, might assume the power to act. But it is not apparent that any such pressing necessity exists, either arising from an equitable regard for the position of the appellant, or from the interests of the Grand Army involved.

1. The candidate was furnished with a blank form of application, containing a statement of the fact whether or not he had made previous application for membership, and had no right to rely upon the unofficial statement of his friend, that he might suppress the fact of his previous rejection. Common prudence would have led him to read the Regulations of a society which he intended to join, when those regulations were open to his free inspection. His familiarity with the rules of other secret societies, shown in his argument, must have taught him that his rejection by a local organization was a material fact which could not be without influence in the action on his second application, and that the printed form for such a statement could not be a dead letter. The dropping of his name from our rolls can throw no imputation upon his character beyond what is necessarily inferred from his own acts. He may make a new application to any Post, and, with the consent of Post No. 32, may be regularly elected and mustered.

2. Our organization differs in many respects from other secret societies. Our Regulations expressly recognize the termination of membership in the Order, either voluntary, by honorable discharge, by neglect, or by sentence of court-martial. There are, therefore, many men not now members of the Grand Army, who have been comrades, and who have filled high and important offices in the Order. The addition of one name to the list does not seem to be likely to affect the interests of the Order to such an extent as to warrant an arbitrary suspension of the Regulations.

It is suggested that the appellant has acted as a Post officer, and it is apprehended that if it is decided that he has never been lawfully a member, his official acts must be declared void.

I do not understand this to be the law. The only practicable rule to adopt in such cases is to consider the acts of a *de facto* officer, so far as they were lawful in themselves, as of the same force and effect as if performed by one holding the office *de jure*.

On the other hand, unless the illegal act of the Post in this case is held void, there is no possible mode of enforcing the Regulation. Either this Regulation and all others relating to the eligibility of candidates are void,—for there is no punishment provided for their violation,—or else an act done contrary to them is void *ab initio*, and when discovered must be so declared.

I think the appeal must be dismissed.

[Chapter 2.—Article 2.]

16 Presented and referred.

SECTION 2. The application shall be presented at a stated meeting, and be recommended by a member of the Post, who shall vouch for the applicant's eligibility; it shall then be referred to a committee of three, of which number the member recommending shall not be one, for investigation and report.

17* Report of Committee.

SECTION 3. The committee shall make careful investigation of the facts set forth in the application; they shall see the applicant in person, and shall recommend his election or rejection, at a meeting subsequent to their appointment, by endorsement upon the application (1–4) : *Provided, however,* That the Commander-in-Chief or a Department Commander may grant a dispensation in writing to a Post, to waive in any particular case (6) the rule prohibiting an investigating committee from reporting upon an application on the evening of their appointment.

An application *favorably reported* by the Committee may be withdrawn by a majority vote of the Post before ballot, upon request of the applicant or of the comrade presenting his application. (See *Note 18*[4], page 71.)

15[5] OPINION 36. W. W. D. June 5, 1872.

Residence.

3. Posts may admit properly-qualified applicants without regard to their residence. Unless such persons have made previous applications for membership, no other Post has any jurisdiction in the matter.

15[6] DECISION 27. J. P. R.

Membership in more than one Post illegal.

A comrade cannot retain his membership in one Post and also become a charter member of another. He cannot be a member of two Posts at the same time.

17[1] OPINION 37. W. W. D. July 1, 1872.

1. Report of investigating Committee on application must be presented in writing, and on the application.

2. Post cannot act on the verbal report of an investigating committee. If so acted on, action is illegal.

3. Where verbal report has been acted upon and applicant has been rejected, the ballot may be renewed before the time specified in the Rules and Regulations.

Can a Post ballot on the application of a person for membership, when the application is not presented by the Committee of Investigation at the meeting when said ballot is cast?

Can the verbal report of a Committee on Investigation be accepted and acted on by a Post, and the candidate thereupon balloted for?

If the above acts of a Post be illegal, can a candidate, who has been balloted for as above and rejected, be balloted for again before the time prescribed by the Rules and Regulations?

The facts which give rise to the above questions are stated substantially as follows:

1. An application was received and properly referred. At a subsequent meeting the committee stated, verbally, that they had signed a favorable report upon the application, and had sent the papers by a comrade to the Post Commander, who was absent from the meeting. The Senior Vice-Commander, presiding, ruled that this statement was sufficient as a report, and put the question to a vote upon the applicant's admission. The applicant was rejected.

2. Chapter 2, Article 2, of the Rules and Regulations, prescribes very exactly the mode of proceeding upon an application for admission. Section 3 provides that the committee shall make their report at a meeting subsequent to their appointment, *by endorsement upon the application;* and Section 4 continues, *after the reading of the report*, etc. Clearly, therefore, the report must be in writing, and on the application, and must be presented in that form at the meeting. The committee need not be present to offer it. It may be previously forwarded to the Adjutant, and read by him or the Post Commander at the meeting; but, until it is in possession of the Post, in writing, it cannot be acted on. It may be said that the production of the application, with the report endorsed upon it, is only evidence that it has been made, and that the statement of that fact by the committee is just as good evidence of it, if it is not doubted or contradicted. This view would be pertinent if the application, after being filed with the report upon it, had been lost. It would, indeed, then be allowable to supply a new copy from memory. But a report required to be in writing is not a report of the committee for the purpose of action by the Post, until it is actually filed and in their possession at a meeting. Until then it is constructively in the hands of the committee, and is actually liable to be changed by them.

3. The first two questions, then, I answer in the negative, applying the limitation to the first, that the report may be sent in, as well as actually presented by the hands of the committee. It only remains to say, in answer to the third question, that the proceedings should be resumed at the point where the irregularity occurred,—that is, the report, endorsed on the application, should be filed; and at any meeting of the Post, in the proper place in the order of business, the report should be read and a new ballot taken.

ON APPLICATION AND ELECTION AT SAME MEETING.

17[2] OPINION 11. W. W. D. September 29, 1871.

1. One not legally introduced into the Order not a member.

2. Council of Administration has no power to legalize an illegal act of a Post Commander.

A Post voted upon an application for admission at the same meeting at which it was received. The applicant was declared elected, and was thereupon mustered into the Post. Some of the members of the Post appealed from its action to the decision of the Department Commander. The Judge-Advocate ruled that the action of the Post was illegal and void. The Department Council of Administration decided, nevertheless, that the applicant should be retained as a comrade.

From this decision the appellants appeal to the Commander-in-Chief.

1. I am of opinion that the appeal should be sustained and the decision of the Council of Administration reversed. The opinion of Comrade Woodbury is correct, and his conclusion is not disputed, but the election and muster were illegal.

If a man was not legally introduced into the Order he is not a member. All the proceedings in his case, subsequent to the reference to the committee, are null and void. The Post Commander should be directed to cause the committee to make a new report. A new election should be held, and then, if the applicant is elected, he should be re-mustered. The reason of the rule requiring the interval between two meetings to elapse between an application and the vote on the question of admission is to give notice to the members of the Post, that the facts may be ascertained which would prevent the election of improper persons. If the applicant in this case is a suitable person for election he will no doubt be elected again; if not, he should not be a member of the Order.

2. It will be readily seen, I think, that the condonation by the Council of Administration of the illegal act of the Post Commander, in putting the question of the applicant's admission at the same meeting at which the application was received, and adoption of the result of that act by considering the person a member, is arrogating to the Council the same power to avoid the Rules and Regulations which the Post Commander assumed.

The Post By-Laws should also be modified so as not to conflict with the Rules and Regulations.

173 DECISION 26. L. F.

Vacancies on Committee on Application.

When, owing to the absence of members of a Committee on Application, other comrades are substituted to fill such vacancies, the committee thus constituted had all the powers which it had before the change in membership, including the right to report at that meeting.

An application for membership was regularly received and referred to an investigating committee. At a subsequent regular meeting the chairman announced that he had seen the applicant, and was ready to report in his favor. The two other members of the committee had not visited the applicant, and were not then present to sign the report. The Post adopted a resolution discharging the two absent members, and the vacancy thus created was filled by the appointment of two others. These had an interview with the applicant, who was waiting in the anteroom, and the committee then reported in his favor, and he was on the same evening elected and mustered.

The point of order was raised that the committee could not report on that evening.

The Post Commander ruled the point of order not well taken, and on appeal his ruling was sustained by the Post.

An appeal was then taken to the Department Commander, who sustained the Post, and from his decision an appeal was taken to the Commander-in-Chief.

Opinion 26. H. E. T. April 11, 1887.

The action of the Post was legal, unless we are compelled to hold that the substitution of the new names for a portion of the committee made the whole a new appointment and undid all that had been done. Such was evidently not the intent of the Post. The chairman of the committee had performed his duty and it appeared that the applicant was worthy. The object of the rule requiring an interval of two meetings to elapse had been accomplished, in giving members of the Post notice and an opportunity for personal investigation. The application was in the hands of the committee and was not withdrawn from it, but a change was made in its membership. Ordinarily a change in a committee, by reducing or increasing its members, does not affect the rights or powers of such committee, and I think there is no sufficient reason for holding otherwise in the present case.

It is my opinion that the committee as finally constituted had all the rights which belonged to the committee before the change, and, among others, the right to report; and that there was nothing irregular in receiving the report and acting upon the application.

I think the Department Commander should be sustained and the appeal dismissed.

174 Decision 1. J. P. R.

Loss of Discharge Papers.

Record evidence of Honorable Discharge requisite. It is not admissible for a Post to admit a recruit upon oral or unofficial testimony.

The proofs of an applicant's eligibility to membership must be such as are prescribed by the common-law rules of evidence. The best available evidence of the essential facts must be produced. The fact of honorable discharge from the service should be shown by the original certificate of discharge, if such was issued to him (which was not always the case), or, in the event of its loss or destruction without his privity or procurement, a duplicate certificate from the War Department, or its equivalent from some officer of the State government having adequate records and authority to issue it.

Opinion 1. W. G. V. November, 1887.

The question presented, in this appeal, is as to what should be received as evidence that an applicant for membership has been honorably discharged from the army, where his discharge paper, called certificate of discharge, is lost. Article 4, Chapter 1, Rules and Regulations, defines who is eligible to membership in the Grand Army of the Republic, and contains this clause: "And those having been honorably discharged therefrom," etc. The Rules and Regu-

lations make the *fact* of an *honorable discharge*, or its equivalent (Opinion 133, 10^{14}, and Decision 14, S. S. B., 10^{8}, BLUE-BOOK), essential to membership, but do not prescribe what shall constitute evidence of such discharge.

The intention evidently was to leave that to be determined by the common-law rules of evidence. It is absurd to assume that this was to be left to the arbitrary rulings of each Post, without any guide. Under these rules the best evidence of which the case, in its nature, is susceptible must be produced. In the case of a written document, the instrument itself is the primary or best possible evidence of its existence and contents.

But when it is satisfactorily shown that the instrument is lost or destroyed, then secondary evidence is admissible to establish the same fact which a production of the instrument would establish. Therefore the discharge paper should be the best evidence of an honorable discharge; but where that is lost, then secondary evidence—that is, evidence of less degree in legal quality—is admissible.

Some cases in England and America hold that there are no degrees in secondary evidence, but the weight of American authority, including that of the United States Supreme Court, is, I think, to the effect that if from the nature of the case itself it is manifest that a more satisfactory kind of secondary evidence exists than that which is offered, the party will be required to produce it. Section 224, Revised Statutes of the United States, provides as follows: "Whenever satisfactory proof is furnished to the War Department that any non-commissioned officer or private soldier who served in the army of the United States in the late war against the rebellion has lost his certificate of discharge or the same has been destroyed without his privity or procurement, the Secretary of War shall be authorized to furnish, on request, to such non-commissioned officer or private a duplicate of such certificate of discharge, to be indelibly marked, so that it may be known as a duplicate."

This statute makes a duplicate easily within the reach of every soldier in case of loss of the original. To require its production would therefore be no hardship, and would safely protect against imposition, and would accord with the spirit of the rules of evidence applicable generally where secondary evidence becomes admissible. I should not say that these rules should be adhered to with great strictness in a matter of this kind now under consideration, but in the absence of any regulation upon the subject, they were intended to be, in my judgment, and should be, the general guide. Whether a certificate from the Adjutant-General of the State should be received would depend upon the statutes of the State where the soldier enlisted. If such officer, or any officer of the State, is required to keep a sufficient record, so that he could, acting under his oath of office, issue a certificate of discharge in case of loss of the original, I think it should be treated of equal validity as though it came from the War Department of the United States.

I have treated this case as though the resolution of Andrew Mather Post was a final determination of the Post upon which it intended to act, by admitting an applicant to muster upon the oral testimony of comrades that he was honorably discharged, or upon the receipt of an authorized claim agent for the discharge. The resolution, in terms, only goes to the extent of expressing "the sense of the Post." If this is to be taken only as an expression of view upon the question, as, for instance, an instruction to delegates to a Department or National Encampment, there could be no objection to it. A Post may properly express its views upon any question not prohibited expressly or impliedly by the governing authority.

I hold that to entitle an applicant, who was a soldier, to membership in the Grand Army of the Republic he must show an honorable discharge from the army either by his original certificate of discharge, if such was issued to him

(which was not always the case), or in the event of its loss or destruction without his privity or procurement, a duplicate certificate from the War Department of the United States, or its equivalent from some officer of the State government having adequate records and authority to issue it.

175 DECISION 6. W. W

*A Post granting the request of an applicant to withdraw his application while it was pending, cannot be construed as a consent of said Post for his muster by another Post.**

F. made application to be mustered as a member of Post No. 47, Department of New Hampshire, and was five times rejected by that Post. He presented his sixth application, and while it was pending asked permission to withdraw it, which request was granted by the Post. Afterwards F. made application to Post No. 34 of the same Department for muster. His application was received, referred, and finally F. was mustered into Post No. 34 and claims to be a member of the Grand Army of the Republic. Post No. 47 did not give its consent to Post No. 34 to muster F. Is his muster regular and is he a member of the Grand Army of the Republic?

OPINION 6. J. B. J. February 9, 1889.

Section 5 of Article 2, Chapter 2, of the Rules and Regulations it seems to me settles this question. It says, "If an applicant be rejected, his admission fee shall be returned, and he shall not be eligible to admission to the Grand Army of the Republic until six months after such rejection. He shall not be eligible to membership in any other Post without the consent, by a two-thirds vote, of the Post rejecting him."

F. had been five times rejected by Post No. 47, and Post No. 47 never consented, by a two-thirds vote, nor by any vote whatever, for his muster into Post No. 34. It is urged that because Post No. 47 consented that F. might withdraw his sixth application for membership, that it is in some way estopped from objecting to F.'s muster into Post No. 34, and the latter clause of Section 3 of Article 2, Chapter 2, of the Rules and Regulations is cited as sustaining such view.

This clause of Section 3 simply provides that an applicant may after a favorable report on his application withdraw it, with the consent of the Post by a majority vote. How such action by the Post could be construed into consent that the applicant could be mustered into another Post does not appear. It will be observed that it only requires a majority vote for the application to be withdrawn, while it requires a two-thirds vote by the Post rejecting an appliation before any other Post can muster the rejected applicant. I am of opinion that F. was not regularly mustered into Post No. 34, and that he is not a member of the Grand Army of the Republic.

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* This Decision will now be governed by the changed conditions of this section permitting the applicant to apply to another Post upon filing statement as provided. (See *Note 19*[1], page 73.) R. B. B.

[Chapter 2.—Article 2.]

18* Balloting.

SECTION 4. After the reading of the report, the Commander shall give opportunity to any comrade having objections to the election of the applicant to state the same, after which a ballot with ball ballots shall be had (1–4). If, on a count of the balls deposited, it appear that not more than twenty are cast, and two or more of them are black, the candidate shall be declared rejected; but if more than twenty are cast, then an additional black ball for every additional twenty shall be necessary to reject. If a less number of black balls than above provided be cast, the candidate shall be declared elected, and no reconsideration of a ballot shall be had after the Commander has announced the result thereof. But, should the result of the ballot be unfavorable, and the Commander suspect any mistake, he may, at his discretion, before declaring the vote, order a second ballot, the result of which shall be final (5, 6).

17[6] *Dispensation.*

NOTE.—This provision confines the authority to grant such dispensation to a *particular case.* A dispensation permitting a Post or Posts to suspend this rule generally, or for a limited time, would be illegal. The Post must apply to Department Head-quarters, stating the facts of each case, and receive a dispensation in writing, if the Department Commander deems proper to grant it. R. B. B.

18[1] NOTE.—In balloting for applicants for membership, the Officer of the Day will have charge of the ballot-box, which should be first presented to the Commander for his inspection and vote, to avoid the necessity of his leaving his position; after which the ballot-box will be placed on the altar or stand and comrades be directed by the Commander to step forward and vote.—MANUAL.

After placing the ballot-box on the stand, the Officer of the Day will take position two paces to the right of the altar, facing the Post Commander.

Comrades are not required to salute when voting. When all have voted who desire to vote, the Commander will direct the ballot to be closed, and the Officer of the Day will present the ballot-box to the Commander for his announcement of the result.

18[2] OPINION 100. W. C. March 29, 1879.

Balloting cannot be for several candidates collectively.

Is it proper for a Post to ballot for several candidates collectively?

Certainly not. Supposing the Post wanted to blackball one and elect the others, how could it be done on a collective ballot (if I may use that expression)?

183 Opinion 15. W. W. D. November 6, 1871.

1. Ballot a personal matter. Should not be used in malice.

2. Opportunity for stating objections to a candidate should be given.

Has a comrade the right to blackball a worthy discharged soldier on purely personal grounds?

1. The mode of election by ballot gives to every comrade voting an unquestionable right and opportunity to express his opinion. The ballot should be conducted so that no comrade's vote should be known, and he cannot, from the nature of the case, be called in question for exercising his choice. No comrade ought to be influenced by personal dislike or malice, but should decide in every case upon his honest convictions. Yet, if he does not, he cannot be restrained of his privilege. He must answer to his own conscience.

2. The Regulations prescribe that before the vote is taken an opportunity shall be given to any comrade to state his objections to the candidate; and if this is complied with the friends of the candidate will ordinarily withdraw his application if it becomes probable that he will not be elected; or, if invalid objections are presented, after friendly discussion, they may be removed.

184 Opinion 138. J. R. C. September 15, 1882.

1. Ballot must be taken after the Investigating Committee has reported adversely. (*See Note.*)

2. Where the decision of the Post Commander is in violation of the Regulations, a vote of the Post to sustain him does not cure the error.

3. Application cannot be withdrawn after Investigating Committeee makes report (*adversely; see Note*), *even by unanimous consent of the Post.*

An application for membership is made in regular form, the Investigating Committee makes its report to the Post, the ballot is about to be taken, when a comrade, friend of the applicant, believing the applicant will not be elected, asks to withdraw the application; appellant objects to permission being granted for the reason that it was in violation of Section 4, Article 2, Chapter 2, Rules and Regulations. The Post Commander, over the objection, granted the withdrawal of the application, giving as a reason for so doing that "the applicant was unworthy to become a member of the Grand Army of the Republic, it having been ascertained that applicant had been a member of the Missouri militia in 1861." Appeal was taken from the decision of the Post Commander to the Post, based on Opinion 89 (see *Note*). The Post Commander based his decision on Opinion 15 (183).

Should the Post Commander have permitted the withdrawal of the application?

The Judge-Advocate of the Department from which this case comes, and to whom it was first referred by the Department Commander, says the case presents a purely parliamentary question, and says, "When the application was presented the Post was possessed of the subject-matter. When it was referred to a committee the committee was possessed of the subject-matter. The application could not be withdrawn without the consent of the Post. With

that consent it could be withdrawn up to the time of taking the ballot. The Post Commander decided that it could be withdrawn. This was erroneous, but the appeal from the decision of the Post Commander to the body and the vote of the body to allow the withdrawal cured the error, unless there is shown to have been thereby violated a constitution or a law."

There is but one question to be decided in this appeal,—*i.e., must the ballot be taken* after the report of the Investigating Committee has been made to the Post?

Yes. Section 4, Article 2, Chapter 2, Rules and Regulations, says, after the reading of the report and opportunity is given for stating objections to the candidate, "ballot with ball ballots *shall* be had." The language is mandatory, emphatic, plain, and the action of the Commander violated this law, and the Post could not cure the violation by sustaining his decision.

The application could not have been withdrawn even by the unanimous consent of the Post, much less when an objection to its withdrawal was raised. It was purely a question of law, and not of parliamentary usage.

If the candidate was *unworthy*, as stated by the Post Commander, all the more necessity for taking the ballot and reporting it to National Head-quarters, as provided in Section 6, Article 2, Chapter 2, for the protection of the Order.

NOTE.—By subsequent amendment, adding the last paragraph to Section 3 permitting withdrawal of an application favorably reported, this Opinion can only apply to applications unfavorably reported upon by the committee.

R. B. B.

18[5] DECISION 2. L. W.

Post Commander cannot order second ballot until he has announced the result of the first.

An appeal was taken from the decision of a Department Commander under the following facts:

A ballot had been had under which an applicant had been duly elected, but the Post Commander, without announcing the result, ordered a second ballot.

Discovering his error, the Commander sought to repair the wrong, but on the submission of the case to Department Head-quarters, it was decided that the second ballot should be completed.

From this decision Comrade R. appealed, on the ground that the Post Commander could not reverse the action of the comrades at the ballot-box, by which the applicant had been elected.

The appeal was sustained, and the decision of the Department Commander reversed.

18 OPINION 57. W. W. D. October 29, 1873.

When Ballot may be set aside.

Where the committee reports favorably without having seen the applicant, and the ballot has been taken the ballot should be set aside by the Department Commander. The applicant, not being mustered, has no claims.

19* Rejection.

SECTION 5. If an applicant be rejected, his admission fee shall be returned, and he shall not be eligible to admission to the Grand Army of the Republic until six months after such rejection. He shall, *after the expiration of that time*, be eligible to membership in any Post *upon filing with his application a statement in writing from the Post which rejected him as to the fact of such rejection.* A second, and all subsequent applications shall be in the same form and subject to the same conditions as the first. (See *Note 15*[4], page 61.)

Note 18[6] *continued.*

The committee on an application for admission to a Post reported favorably, and on ballot the applicant was elected. Immediately after, at the same meeting, and before his muster, it was stated to the Post by a member not present at the time of balloting, that the candidate was an unfit person to become a member, and the committee then acknowledged that they had neglected their duty, and had not seen the candidate in person. Must the Post proceed to muster him, or what can they do in the premises?

The Post in electing the candidate acted on the faith that the Investigating Committee, as implied by their favorable report, had performed their duty. If they had known the truth, that they had not before them the information they had a right to possess before balloting, it is to be presumed that they would have postponed action. I think the Post ought not to be debarred from a true expression of their opinion and wishes by the negligence of the committee. In ordinary cases I should hold an election to be conclusive, but it appears to me that the circumstances of this case are so peculiar as to call for the interposition of the Department Commander. I think he should order the report and vote to be declared void, and the committee, or a new one, to investigate and report at a subsequent meeting, and thereupon a new ballot to be taken.

As the applicant has not been mustered, he can have no claims in the matter.

19[1] NOTE.—This section was changed in an important particular by the National Encampment at Boston, 1890, by striking out the provision that an applicant rejected "shall not be eligible to membership in any other Post without the consent, by a two-thirds vote, of the Post rejecting him." The words substituted are in italics. R. B. B.

19[2] DECISION 5. W. W.

An applicant who has been rejected by a Post cannot be mustered by another Post until six months after his rejection [and until the consent of the Post rejecting him has been given]. (See *Note.*)

In September, 1886, A. made application to Post No. 89 for admission. His army record was all right, having served three years in the army within

required dates, and he held an honorable discharge. But he was rejected by Post No. 89. In February, 1887, he made application to Post No. 221, same Department. Post No. 89 was requested to consent to A.'s admission to Post No. 221, but declined to do so. Can A. be mustered into Post No. 221 as a member of the Grand Army of the Republic?

Opinion 5. J. B. J. February 12, 1889.

There are two reasons why A. cannot be mustered by Post No. 221 under his application.

First. Because six months did not elapse between the time of his rejection by Post No. 89 and his application to Post No. 221, and this length of time must elapse, under Section 5, Article 2 of Chapter 2, Rules and Regulations, before a candidate rejected can be mustered into the Grand Army of the Republic.

Second. [Because Post No. 89 did not by a two-thirds vote consent that A. should be mustered into Post No. 221, as required by Section 5 of the Rules and Regulations above referred to.] It is urged that this rule, when enforced literally, will often work great injustice, as in the case under consideration. This proposition is sufficiently answered in the fact that the Post and every officer is bound to obey the law as it is, and resort only for its change to the National Encampment, where alone the power is lodged to make appropriate amendments to the Rules and Regulations.

Note.—The words in brackets in this Decision and paragraph second of the Opinion are now inoperative by reason of subsequent amendment to this section, as stated in Note 19[1]. R. B. B.

19[3] Decision 4. R. A. A.

If an application for membership is rejected by a Post, the applicant may, at the expiration of six months, apply to another Post for admission.

Opinion 4. D. R. A. 1890.

In what manner and by whom should a request be made to a Post, that has rejected an applicant, for permission to act upon his petition in another Post?

If an application for membership is rejected by a Post, the applicant, at the expiration of six months, may again apply to the same Post, or he may apply to any other Post upon filing with his application a statement in writing from the Post which rejected him, as to that fact.

The Rules and Regulations do not specify by whom or in what manner this shall be obtained, whether by the applicant before applying for membership in another Post, or by the Post after the application has been received. Either method would, we think, be legal. But in my opinion the latter course is the better and safer practice. By this method both Posts will have official notice of the proceedings, and the rejecting Post will always be advised as to the Post to which the applicant has applied for admission.

20 Head-quarters to be notified.

SECTION 6. The name of a rejected applicant shall be forwarded to National Head-quarters through the proper channel.

21* Notice of Election.

SECTION 7. Each applicant, upon his election, shall be at once notified thereof in writing, and on presenting himself for membership shall be properly mustered (1–4).

Must be mustered within Three Months.

But, unless he present himself for muster within three months from the date of such notice, his election shall be void (4), and all moneys which may have been required by the Post to accompany the application shall be forfeited to the Post treasury.

Dispensation.

The Commander-in-Chief, or a Department Commander, may, however, grant a dispensation in any particular case to a Post to muster a candidate, even though he has *not* presented himself for muster within three months after notice of election. (See *Note 17*[6], page 70.)

21[1] DECISION 8. J. S. K. March 12, 1885.

If, after an applicant has been duly elected, but before he has been mustered, he should so conduct himself as to convince the comrades of the Post that he is unworthy of membership in the Grand Army of the Republic, they may, by a vote of the Post, ask the Department Commander to set aside the ballot by which such applicant was elected, and it is lawful for him to set such ballot aside.

An applicant duly elected to membership, before being mustered, conducted himself in such a manner as to cause the Post to adopt a resolution requesting the Department Commander to set aside the ballot by which he was elected. Upon this request the ballot was set aside by the Department Commander.

The action of the Department Commander was sustained as recited in the Decision.

21[2] DECISION 1. J. S. K. August 27, 1884.

A Post may adopt By-Laws fixing certain nights for the muster of recruits, and having regularly adopted such a By-Law, may refuse to muster a recruit who presents himself for muster upon any other night.

1. Can a Post adopt a By-Law fixing certain nights for the muster of recruits?

[Chapter 2.—Article 2.]

22* Muster Fee.

SECTION 8. A member-elect shall pay, before enlistment and muster, an admission fee of not less than one dollar. Upon muster-in he shall subscribe to a copy of these Regulations, and

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Note 21[3] continued.

2. Would a Post be justified in declining to muster a recruit who presented himself at any other time?

Such a By-Law adopted by a Post for its own convenience, would not be inconsistent with the Rules and Regulations, and in the absence of any rule or order of the Department to the contrary, a Post may provide in its By-Laws certain specified nights for mustering recruits; and having so provided, it follows that it may refuse to muster a recruit presenting himself at any other time.

21[3] DECISION 13. L. F.

Muster-in of a candidate cannot be dispensed with, and an applicant who died after being elected, but before muster, did not become a member of the Order.

A candidate for admission, duly elected to membership, was taken sick and died without being mustered. Was he a member of the Grand Army of the Republic at the time of his death?

OPINION 13. H. E. T. January 10, 1887.

The muster-in of a candidate cannot be dispensed with, and in my opinion the applicant was not, at the time of his death, a member of the Grand Army of the Republic.

21[4] DECISION 24. J. P. R.

Muster legal after the expiration of three months.

The Rules and Regulations do not, in terms, require that a recruit should actually be mustered within three months after written notice of his election. He is required to present himself for muster within three months after such notice, but there are no words of exclusion which prohibit his muster after the expiration of that period. Such muster is therefore not void for that reason alone.

22[1] OPINION 2. N. P. C. July 3, 1871.

Regulations do not require admission fee to accompany application. (See *Note.*) *When paid it becomes the property of the Post. Post has power to remit.*

[This Opinion was given in the case of a soldier in the regular army who,

of the By-Laws of the Post, and receive from the Post a membership badge, the cost thereof being added to the muster fee. Comrades are forbidden to wear any other membership badge

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Note 22[1] continued.

by removal to a distant station after election by a Post and before muster-in, could not present himself for muster within the three months prescribed.

The Judge-Advocate-General ruled that the Commander-in-Chief could not grant any relief in such a case. Authority for such dispensation was created by amendment to the Rules, Encampment of 1872, and paragraphs 1 and 2 on this point are omitted as now *void.*

The third query was as to the right of the Post to return the fee forwarded with the application.]

The third question is not directly answered by the Regulations. The money forwarded is forfeited, and has become the property of the Post; but the forfeiture is not of the nature of a punishment for misdemeanor, the rule requiring the admission fee to accompany the application being rather intended to secure a pledge that the application is made in good faith. The Regulations do not require the admission fee to be forwarded with the application,* but only that it shall be paid before enlistment and muster. It was forwarded in the present case in accordance with a By-Law of the Post. The money being now the property of the Post, and entirely under their control, the Post may appropriate from their funds an equal amount to the sum paid by the applicant, if they desire to relieve him from the pecuniary loss which he has unfortunately incurred. I am the more confident in this expression of opinion from the spirit of the provision of Section 3, Article 4, Chapter 5, which specifically gives to any Post the power to remit the dues of members who are unable, by reason of sickness or misfortune, to pay them.

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* The statement that the Rules and Regulations *do not require* the muster fee to accompany the application is technically correct; but a Post may so require by its By-Laws, under the authority of this section, "all moneys which may have been *required by the Post to accompany the application* shall be forfeited to the Post treasury." R. B. B.

22[2] OPINION 5. W. W. D. August 14, 1877.

Power of Post to fix amount of muster fee.

It is within the power of any Post to fix the amount of the muster fee to be paid by new members, provided that it shall not be less than one dollar (*vide* Chapter 2, Article 2, Section 8, Rules and Regulations). This initiation fee should be fixed by the Post By-Laws, and may be altered at the discretion of the Post, in the manner that such By-Laws may prescribe in the case of other amendments.

22[3] OPINION 86. W. C. February 27, 1878.

Muster-in fee must be uniform. "Same Manner"—Meaning of.

Under Section 3, Article 4, Chapter 2, Rules and Regulations, can a Post establish an initiation fee for one of its *honorably-discharged* comrades different

than that obtained through the proper channels from National Head-quarters (1–3)

23 Muster by Commander-in-Chief or Department Commander.

SECTION 9. The Commander-in-Chief, or a Department Commander, may, at pleasure, receive and muster in an applicant for membership, or detail a comrade for that purpose, provided the person so received and mustered in resides outside the proper territorial limits of any Post.

24* Grades.

SECTION 10. The applications for membership of persons who were comrades before the introduction of the grade system, but who never took the obligation of the third grade, shall be received and acted upon the same as if the applicant had never belonged to the Grand Army (1, 2).

Note 23 continued.

from that established for recruits? What does the phrase "same manner" mean?

I am of opinion that a Post must have a regular and uniform initiation fee, and that it cannot establish different fees for different applicants, for this would be in violation of the simplest privileges of the fairness, impartiality, and uniformity which is supposed to pervade all law. The meaning of the phrase "same manner," in the section referred to, is, in my judgment, that all forms, reports, and proceedings (save those excepted by the rule, to wit, "Muster" and "Taking anew the obligation") must be observed as in the case of an original applicant.

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24 GRADES. (See also reference to Grades in Introduction.)

Opinion 53 is here inserted for its reference to the system of Grades. That part of the Opinion omitted—that a person twice rejected was thereafter ineligible—is now void by amendment to the Rules.

OPINION 53. W. W. D. July 9, 1873.

Person twice rejected by the same Post.

Does the last clause of Section 5, Article 2, Chapter 2, of the Rules and Regulations, forbid the reception of an application for membership from a person who has been twice rejected by the same Post under the old organization?

The question proceeds upon an erroneous assumption. It implies that there have been different organizations succeeding each other under the common name of the Grand Army of the Republic.

ARTICLE 3.

ADMISSION OF COMRADES FROM OTHER POSTS.

25* By Transfer.

SECTION 1. A comrade having a valid transfer card may be re-admitted to the Post which granted the same by a two-thirds vote of the members present and voting at a regular meeting, or he may be admitted to another Post, after his name has been pro-

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Note 24[1] continued.

The Order, in fact, has been one continuous body, with the same objects, and with substantially the same plan of operations.

The only important changes in its system have been the introduction and abandonment of grades of membership, and it will be observed that this system was embodied in one article of the Regulations, Article 5, Chapter 1, editions 1869–70, and was eliminated by striking out that article and making brief verbal alterations in a few other sections. By that article certain members were given peculiar powers, and new recruits were placed for a time on probation. In May, 1871, by repeal of these provisions, all members were again placed upon the same footing. Always, however, they were comrades of the same Order, banded together for the support of the same principles. A person who applied for admission to a Post of the Grand Army in 1867 desired to join the same society which an applicant in 1873 wishes to enter. Any particular Post of the Grand Army is the same body, and holds substantially the same relation to the Order which it held from the beginning.

It is quite within the power of any voluntary association to say who shall be eligible to membership in its ranks, and to change its requirements at will; and a person who applies for admission must be governed by the law as he finds it at the time of his application. In this case the prohibition has the same effect as if it had been inserted in the section which prescribes the classes of persons who may or who may not be admitted.

The clause in question first appears in the revision of the Regulations adopted at Cincinnati, May, 1869, at the same time that the system of grades was adopted. Previous to that time an applicant might present himself indefinitely at intervals of six months. At the same session the clause was adopted making ineligible those who at any time had borne arms against the United States. Until then a reconstructed rebel, for anything in the Regulations, might have been proposed and admitted to membership; but, as it seems to me, both the clauses adopted at Cincinnati have the similar effect of preventing the reception of either class of applicants after that time.

25[1] OPINION 78. W. C. November 26, 1877.

1. Vote on application on transfer card may be either by ballot, hand, or viva voce.

2. Transfer card—Holder may visit Post.

3. May also become charter member of new Post.

1. Should the vote required by Section 1, Article 3, Chapter 2, be *viva voce* or by ballot?

posed, referred, and reported upon as in case of an applicant for membership, and upon receiving a two-thirds vote of the members present and voting at a regular meeting, or he may be admitted a charter member of a new Post (1–8).

SECTION 2. Each Post may establish such admission fees, to be paid by comrades joining by transfer, as they may think proper, not exceeding the amount required from recruits.

See Section 2, Article 4, following, for issue of Transfer Cards.

Note 25 [1] *continued.*

I see no reason why it might not be either, or by hand; if by a ball ballot, then it would require more than a third to be black balls in order to reject.

2. Has a comrade holding a transfer card a right to visit a Post? Has he such right if not correct in the National or Department countersign?

In my opinion such comrade has the same right to visit a Post as any other member of the Order. If he has not the countersign necessary for admission, of course he can only be admitted by the Officer of the Guard, or Day, acting under directions of the Post. I do not see why the whole matter does not rest in the discretion of the Post as to the admission of any comrade into the meetings of the Post, except such as visit on official business upon authority from Department or National Head-quarters.

3. Can a member holding a transfer card be a charter member of a new Post?

Yes.

25[2] OPINION 137. J. R. C. September 15, 1882.

Admission on transfer. Must be by a regular application.
Transfer card should accompany the application.

A comrade from another Post, having a transfer card, being present at a meeting of this Post, wished to join this Post on his transfer card. The rules being suspended, motion was made that he be accepted. The motion was put by the Post Commander and carried by *viva voce* vote. The question was raised as to the legality of the admission of the comrade.

A comrade having a valid transfer card and applying for membership to a Post *other* than the one which granted the transfer card, must have his name "proposed,"—that is, must make a regular application and have it referred and reported on, as in case of any applicant for membership. (Section 1, Article 3, Chapter 2, Rules and Regulations.)

The transfer card should accompany the application.

Election to membership on application on transfer card may be by ballot or *viva voce*. (Paragraph 2, Opinion 78, 25[1].) I do not see any law for *viva voce* vote save the Opinion referred to, but this having been approved by the National Encampment is law until changed by the National Encampment.

253 DECISION 16. G. S. M.

Transfer card—Holder of, who, on application to be admitted to a Post, is rejected, is not required to obtain the consent of the Post that rejected him in order to join another Post.

A comrade in good standing takes a transfer card from Post No. 63; he subsequently presents this, and asks admission to Post No. 23, but his application is rejected. His transfer card, without any indorsement thereon, is returned to him, and after the expiration of the year for which the transfer is granted he applies for membership in Post No. 35. The Judge-Advocate renders an opinion that the rejection of G. upon application upon transfer card necessitates the consent of Post No. 23 to his application for membership in any other Post, and that the provision giving an honorable discharge to comrades who take a transfer card and who do not join any other Post within one year, does not apply to any one who applies to and is rejected by a Post on said transfer. This opinion was affirmed by the Department Commander, and from this decision Post No. 35 appealed.

G., not being admitted to any Post within a year from the date of his transfer card, was "honorably discharged from the Order" within the meaning of Section 2, Article 4, Chapter 2, Rules and Regulations. Being so "considered," he is entitled to readmission under the conditions set forth in Section 3, Article 4, Chapter 2, and is subject to no others. His rejection by Post No. 23 involves not the question of admission to membership in the Grand Army, but the materially different question of admitting a member of the Order to membership in a particular Post. The case, therefore, does not fall under Section 5, Article 2, Chapter 2, Rules and Regulations, nor under Opinion 72 (154). There seems to be nothing in the language of Section 2, Article 4, Chapter 2, Rules and Regulations, or in the context, implying any discrimination between comrades who apply and are not admitted on transfer cards and those who do not so apply at all. The absence of any provision in the Rules and Regulations for reporting rejections on transfer cards is a fact which, though not conclusive, is confirmative of the view here taken.

The decision of the Department Commander is overruled and the appeal sustained.

254 OPINION 79. W. C. December 4, 1877.

Members of a Post cannot become charter members of a new Post without transfer cards or having been honorably discharged. National or Department Head-quarters may order transfer cards.

A Post represents that in October, 1876, certain of its members (in the regular army), without notice, without any communication with it, left the Post and, without transfer cards or honorable discharges, joined another Post; upon hearing which latter fact it sent a communication to said members, of which no notice has been taken; and that in June, 1877, said members were suspended by it for non-payment of dues.

[Chapter 2.—Article 3.]

On the other hand, said members represent that, although they left the Post (being obliged to go with their regiment), yet when they learned of the intended departure of their regiment they applied for their transfer cards, but, by the advice of the then Adjutant and the present Commander of the Post, they postponed taking the cards until their actual departure or the arrival of certain expected members. That after said arrival said Adjutant reported that there were no blanks; that they then telegraphed to Department Headquarters for blank cards, receiving a reply that some would be sent in a few days, and suggesting that the address of the departing comrades be taken, so that the cards could be forwarded. That on November 2 they had the positive assurance of the present Commander of the Post that the cards would be promptly filled, signed, and forwarded; that they left on November 5; that they were in good standing when they left (this is admitted by the Post); that on the 19th of November they wrote for their cards and received no reply; that early in December they wrote again for their cards and received no reply; that on January 9, 1877, they changed their station to a place where there was a Post charter in the possession of a single comrade, who requested them to join with him; that they represented to him their situation, and at his request they wrote again in the latter part of January for their cards, but got no reply; that about the last of February they stated their case to the Department Commander (their removal was into another Department), who instructed this single comrade to reorganize the Post and to admit them as members; that the Post was reorganized (and it is understood they joined it). They express themselves ready to verify their statement by numerous affidavits, and the statement is corroborated by the Commander of the Department in which these members now reside. While the Commander of the Department to which the Post belongs corroborates the statement of the Post as to a communication being forwarded to these members, it does not appear, however, what this communication was.

Upon this statement I am asked, What is the effect of such a state of affairs?

It does not seem necessary, or even proper, that the Judge-Advocate-General should decide who is responsible for such an unfortunate state of affairs, and, without passing upon that question, I am of opinion that these members ought not to have been admitted into the Post, which it appears they joined on or about last February. I cannot regard them other than as members of the old Post until, upon a transfer card, they have regularly joined a new Post, or have been discharged honorably from the old Post.

If their statement be taken, I see no difficulty in National or Department Head-quarters directing the Post to furnish the transfer cards, as of the date when they left, which would settle the whole matter.

If the statement of the Post be taken, they can undoubtedly be court-martialled; at any rate, as the case stands at present, they are, in my judgment, members, and members only, of the old Post, unless, of course, they have been, meanwhile, dropped from the rolls, in which case their membership of the new Post would still be illegal.

255 OPINION 67. W. W. D. September 3, 1875.

After presentation of a transfer card and muster into a new Post, the comrade is a member of the new Post.

Regulations require signing of the By-Laws.

A transfer card was granted T., June 8, which he presented at the organization of a new Post, June 9, and he was mustered as one of the charter members. He neglected to sign the By-Laws of the new Post and to attend its meetings after the first one, and on July 27 the new Post voted to return his transfer card to his former Post, with a request to them to withdraw it.

After the presentation of his transfer card and his muster into the new Post as others were mustered, Comrade T. must be considered a member of the new Post. The Regulations imply that all members shall sign the By-Laws within a reasonable time, but no specific time is mentioned. He may, therefore, sign now and complete his membership. A transfer card is generally conclusive upon the Post which issues it, except in case of fraud.

256 DECISION 3. R. B. B.

Rejection on transfer card.

An applicant on transfer card was rejected.

(*a*) Should his transfer card be returned?

(*b*) Should the fact of such rejection be endorsed thereon?

(*c*) Can he apply to another Post without the consent of the Post rejecting him?

(*d*) If not so admitted, is he honorably discharged at the end of twelve months, notwithstanding the rejection?

(*e*) If not honorably discharged, what is his relation to the Grand Army of the Republic?

The rule governing the rejection of applicants for membership does not apply to applications on transfer. Therefore the card is to be returned to the applicant without endorsement. He can apply to any other Post or Posts without consent of the one rejecting him, but this fact is necessarily shown *on his application.* If not admitted to a Post within twelve months from date of transfer, the comrade stands honorably discharged from the Order, notwithstanding the fact of previous rejection.

257 OPINION 92. W. C. September 10, 1878.

Charter members. Comrades must have transfer card or honorable discharge.

In order for a comrade to be admitted as a charter member of a new Post, must he have an honorable discharge or a transfer card?

A member may be admitted as a charter member of a new Post upon a transfer card.

25[8] DECISION 3. J. P. R.

An application on transfer to, and election by, a Post, constitutes the applicant a member thereof even if he fails to sign the By-Laws of the Post or pay admission fees or dues. An election of one so situated in another Post is void. Re-muster not required.

A comrade holding a transfer card from one Post made application for admission to another, was duly elected, and was notified of such election. He never paid any admission fee or dues to the new Post, nor was he mustered therein. He never subscribed to the By-Laws of that Post, and was never in the Post-room. Subsequently, and within one year from the date of the transfer, having returned to his former place of residence, he applied for a return of his card, but received no reply. After the expiration of one year, considering himself honorably discharged under the Rules and Regulations, he applied for admission to his former Post, was regularly elected and mustered, and became its Commander. *Held*, that his application to and election by the Post to which he applied on his transfer constituted him a member thereof, said Post having waived the payment of admission fees and dues, and it not appearing that subscription to the Regulations and By-Laws was required as a condition of membership. It follows that his election as Commander of his former Post was void.

OPINION 3. W. G. V. January, 1888.

The facts as stated in substance in the appeal are as follows:

Comrade H., on the 11th of September, 1886, took a transfer card from Post No. 122, and in October following made application for admission to Post No. 159, accompanied by his transfer card, but received no official notice of the action upon his application for three months, and in the mean time was taken sick and was thereby rendered unable to present himself at the Post meetings. It does not appear how long he was thus sick, but his disease was pneumonia. He never paid any admission fee or his dues to Post No. 159, nor was he mustered therein; nor did he subscribe to the Regulations and By-Laws of that Post, and never was in the Post-room; but he was elected as a comrade with a transfer card from another Post, according to the provisions of Section 1, Article 3, Chapter 2, Rules and Regulations.

In the following March he moved back into the jurisdiction of Post No. 122, and before the transfer card had become void by expiration of a year from its issue, he applied to Post No. 159 for it, but received no reply. After the year expired without his having been readmitted to Post No. 122, or admitted to Post No. 159, unless the foregoing facts constitute an admission, he considered himself as honorably discharged from the Order, as provided in Section 2, Article 4, Chapter 2, Rules and Regulations, and subsequently applied for admission to Post No. 122, and was regularly elected and mustered,

and became the Post Commander. It now appears that Post No. 159 claims he became a member of that Post by virtue of his election as aforesaid, and this notwithstanding his failure to be re-mustered and to subscribe to the Regulations, and the other facts above stated.

Comrade H. denies that he became a member of Post No. 159, claiming that re-muster and subscription to the Regulations and By-Laws were essential to his membership in that Post.

Section 2, Article 4, Chapter 2, Rules and Regulations, provides that a comrade having a transfer card duly granted to him may, upon presentation of it to any Post, within one year from date of its issue, be admitted *in the manner prescribed in Article 3 of this chapter.*

Section 1, Article 3, Chapter 2, reads as follows: "A comrade having a valid transfer card may be readmitted to the Post which granted the same by a two-thirds vote of the members present and voting at a regular meeting, or he may be admitted to another Post, after his name has been proposed, referred, and reported upon, as in case of an applicant for membership, *and upon receiving a two-thirds vote of the members present and voting at a regular meeting.*"

Article 3 nowhere expressly requires a re-muster in case of admission of comrades from other Posts. Neither is there such implied requirement.

If re-muster is required where a comrade enters another Post, it must be where he re-enters his former Post before his transfer card becomes void, because the two provisions are in the same section, and stand in such conjunction that there is no ground for distinction between them as to muster.

The clause, "as in case of an applicant for membership," applies only to the steps preceding the ballot,—viz., the application, the reference, and the report,—not to the ballot or anything subsequent. The only condition of admission, after the name is proposed, referred, and reported, is a two-thirds vote. There would be no propriety in requiring a re-muster. A comrade does not cease to be a member of the Order until a year has elapsed after receiving a transfer card. (See Section 2, Article 4, Chapter 2, Rules and Regulations.) He may, in the mean time, visit Posts. (Opinion 78, 25[1], page 79, BLUE-BOOK.) He may hold his seat as a member of the Department Council of Administration. (Opinion 135, 27[6], page 89, BLUE-BOOK.)

If a comrade having a transfer card fails to obtain membership in a Post within a year, then he becomes "discharged from the Order." (Section 2, Article 4, Chapter 2.) He, therefore, is not discharged before, and if not discharged he must be a member; and the same section provides that he shall, in the mean time, be subject to discipline. After receiving the transfer card the comrade is not a member of a Post, but is a member of the Order. While a member of the Order, a re-muster on joining another Post would be nonsense. A comrade honorably discharged may even be readmitted without re-muster. (Section 3, Article 4, Chapter 2.)

Opinion 67, 25[5], page 83, BLUE-BOOK, merely declares the *status* of a comrade who had been mustered into a new Post after presentation of a transfer card. The question in this case was not there raised or touched.

The payment of the admission fee by comrades joining by transfer is not an essential to admission, and if required the Post may defer or even waive it. (Section 2, Article 3, Chapter 2.)

The subscribing of the Regulations and of the By-Laws of the Post is a requirement applicable only to those who stand as original applicants,—that is, those who have never belonged to the Order, or who have been honorably discharged therefrom. This is apparent from the provisions of Articles 2 and

ARTICLE 4.

LEAVES OF ABSENCE, TRANSFERS, AND DISCHARGES.

26* Leave of Absence.

SECTION 1. Any comrade applying therefor, in person or by letter, shall be granted a leave of absence by the Commander, attested by the Adjutant, for a specified time, not exceeding twelve months, commending him to the good offices of all comrades, provided he has faithfully discharged all duties enjoined upon him, and has paid in advance all dues for the time specified in the leave of absence. Any Post giving relief to a visiting comrade shall endorse the amount upon his leave of absence, and shall also notify thereof the Post of which he is a member.

27* Transfer Card.

SECTION 2. Any comrade against whom no charges exist, and who has paid all dues, shall receive, upon verbal or written appli-

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Note 25[8] continued.

3, Chapter 2, of the Rules and Regulations. Therefore, a failure to subscribe by an applicant under a transfer card is not fatal to his membership in the Post.

The Post may, by By-Law, undoubtedly require payment of an admission fee and subscription to the Regulations and to the By-Laws of the Post as a condition of Post membership, where the applicant comes with a transfer card from another Post, but it is not said or claimed that Post No. 159 had such By-Law.

So far as appears in the record of appeal, Comrade H. had done all that the Regulations of the Order required in order to be admitted to Post No. 159, and was duly elected a member of that Post, and was regarded as a member by the Post, and there is nothing to show that there was any By-Law or requirement of the Post which barred him from becoming a member by an election upon his application. He had proposed and was accepted.

Comrade H.'s appeal is therefore overruled and the ruling of the Department Commander sustained.

26[1] Posts are required to use the forms for Leaves, Transfers, and Discharges provided by National Head-quarters.—*Resolution, Denver Encampment, 1884.*

27[1] OPINION 3. W. W. D. August 11, 1871.

A comrade may demand transfer—Post can place no restrictions thereon. Request for transfer card may be by written application.

The facts will sufficiently appear in the Opinion.

I am of the opinion that Section 2, Article 4, Chapter 2, of the Rules and

cation to the Commander, at a meeting of the Post, a transfer card attested by the Adjutant. Upon presentation of it to any Post within one year from date of its issue, he may be admitted in the manner prescribed in Article 3 of this chapter. In the mean time he shall remain, for purposes of discipline only, under the jurisdiction of the Post granting the transfer card. If at the expiration of a year he has not been admitted to membership in any Post, the transfer card shall be void, and the holder be considered as honorably discharged from the Order (1–11).

Note 27[1] continued.

Regulations, gives to any member in good standing, whose dues are paid, the right to demand a transfer paper, and that no Post can impose any restriction upon his right in the form of a fee or otherwise.

27[2] OPINION 28. W. W. D. March 16, 1872.

Commander of a Post may require application for a transfer paper to be reduced to writing.

Can the Commander of a Post require an application for a transfer paper to be made in writing?

It is a general rule of parliamentary law to require any motion to be presented in writing, at the suggestion of the presiding officer or of any member. The meetings of Posts are governed, in the absence of express regulations, by the general principles of deliberative bodies. I think, therefore, the Post Commander has discretionary power to require such an application as the question relates to to be reduced to writing before entertaining it.

27[3] OPINION 29. W. W. D. April 2, 1872.

It is the duty of the Commander of a Post to grant a transfer or withdrawal card to a comrade in good standing, when it is applied for at a meeting of the Post.

Has a Post Commander authority to transfer or discharge comrades without a vote of the Post upon the application?

The Regulations make it the imperative duty of the Commander to grant a comrade in good standing, applying therefor at a meeting of the Post, a transfer or discharge. A vote of the Post instructing the Commander not to do so would be void.

The reason for requiring the application to be made at a Post meeting is not that a vote may be taken, but that the members may know of the application, and may state any legal objection to it.

274 DECISION 4. S. S. B.

Any comrade against whom no charges exist, and who has paid his dues, may demand orally, or in writing, at a meeting of his Post, a transfer card. A failure on the part of the officers of the Post to perform their duty and issue such transfer card could not operate to defeat a comrade's transfer to another newly-organized Post to which (in the case in question) a comrade was admitted by the Department Commander, who possessed full knowledge of all the facts in the case.

OPINION 4. C. H. G. November 23, 1885.

Certain members of a Post made application at a regular meeting of the Post for transfer cards. They were not in arrears for dues, nor were there any charges preferred against any one of them. Later, at a special meeting of the Post, which was called for the purpose "of extending to the Commander of the Department a proper greeting," these comrades demanded transfer cards, and were told that they should have them as soon as they could be made out. The Adjutant said to the members so requesting transfer cards that "he would hand them to them the next day, as it would be impossible for him to make them out that night, and that the records would show the action taken at that meeting." At the close of that meeting the Department Commander, who was present, authorized the installation of a new Post, and these comrades joined the same, and were mustered in by the Department Commander. The Department Commander decided that these comrades had become legal members of the new Post, and an appeal was taken. The questions arising are as follows:

1st. Did the demand of the comrades and the action of the Post operate as a transfer of these comrades?

2d. Could they legally become members of the new Post without having actually received transfer cards?

Section 2, Article 4, Rules and Regulations, permits "any comrade against whom no charges exist, and who has paid all dues," to demand, orally or in writing, *at a meeting of the Post*, a transfer card, attested by the Adjutant. The demand might be made at a regular or a special meeting. The right of a member to a transfer card upon mere demand is a personal right to him, and cannot be defeated except by evidence that he is in arrears for dues, or that charges are preferred against him.

The failure or neglect of duty by the Adjutant could not affect the *status* of these comrades. They had done all the law required. They had not been refused their cards, and could not be. There is no force in the suggestion, in my judgment, that the meeting was a special and not a regular meeting. It was *a meeting of the Post*. These comrades having done their duty, I hold that for all purposes they ceased to be members of that Post, and were free to join another.

275 OPINION 39. W. W. D. September 2, 1872.

The holder of a transfer card not liable for dues after card is issued.

What is the condition of a comrade, who, having taken a transfer paper to join another Post, has delayed presenting it for two years, and now wishes to rejoin the Post from which he took the paper? Should he pay the dues which have been assessed for two years past?

The only provisions of the Rules and Regulations on this subject are found in Articles 3 and 4 of Chapter 2. Article 4, Section 2, provides that until the reception of a comrade who has taken a transfer paper, by some other Post, "he shall remain, for purposes of discipline only, under the jurisdiction of the Post granting the transfer card;" and Article 3, Section 1, that "a member of any Post having a transfer card may be admitted to another Post by a two-thirds vote by ballot, after having his name proposed and referred, as in case of an applicant for membership," the number of ballots required to elect constituting the only difference in the reception of such a candidate from the admission of a recruit.

. . . The first paragraph quoted above seems to settle the question of dues. The payment of dues is not a part of discipline in the intent of that section. The man's name must have been dropped from the rolls of the Post when his transfer paper was granted, and I think he stands in no other relation to it than the relation he occupies to any other Post which he might wish to join. I am of opinion that he should make application to be readmitted under Section 1 of Article 3, and that he should be proposed and voted for as there provided. His transfer papers should be forwarded with the application, and will be conclusive evidence of the facts it recites.

276 OPINION 135. J. R. C. August 12, 1882.

A comrade who holds a transfer card not yet expired may hold his seat as a member of the Department Council of Administration.

Comrade N. applied for and received a transfer card from his Post some time during the second quarter of 1882. He was a member of the Department Council of Administration, and attended the Department Encampment after the transfer was granted him. Comrade D. objected to Comrade N. acting with the Council, on the ground that Comrade N., having taken a transfer, was a member of the Grand Army of the Republic at large, and therefore not a member of the Department.

The objection was overruled, and on this ruling Comrade D. appeals.

The objection was not well taken, and the ruling of the Department Commander should be sustained. There is no such thing as a "member of the Grand Army of the Republic at large." Section 2, Article 4, Chapter 2, Rules and Regulations, defines the transfer card and the standing of the comrade holding transfer card. He is subject to the Post issuing the transfer card, "for purposes of discipline;" the transfer card is valid for one year. During all that year he is a member of the Grand Army of the Republic. He has the entire year in which to deposit that card. He could be tried for violation of the Rules and Regulations at any time within that time. Where?

Within that Department and by the Post issuing the card, and no place else. At the *end* of the year, and not till then, does he cease to be a member of that Department and of the Order, though not an active member of the Post from the date of card.

The comrade referred to herein was within the limit, and while not an active member of the Post, was to all intents and purposes a member of the Grand Army of the Republic of that Department, and entitled to his seat in the Department Encampment.

277 DECISION 8. J. P. R.

Transfer Card and Countersign.

A comrade's right to the countersign is not affected by the fact that he holds a transfer card.

A comrade holding an unexpired transfer card is entitled to the countersign. It does not follow, however, that any Post Commander is required as an official duty to confer it. The duty of conferring the countersign is inferred from the fact of membership and the provisions of the Ritual, being nowhere expressly prescribed. Certainly no Post Commander violates a prescribed duty in refusing to communicate the countersign to a comrade not a member of his Post. Where necessary, application should be made to the Department Commander, who may act either by himself or by some officer to whom the duty may be deputed by him.

OPINION 8. W. G. V. July, 1888.

The appeal record in this case states this question:

Has a comrade, who is out on transfer card, the right to the countersign? Or, in other words, is a Commander of the Post compelled to give the countersign to a comrade who is out on a transfer card?

It appears that the countersign was refused upon demand of a comrade who had a valid transfer card, until a ruling could be had from National Head-quarters, on appeal from the Department ruling.

I think it fairly inferable, though not so stated, that the demand was made of the Commander of the Post where the transfer card was granted.

The Rules and Regulations nowhere in terms provide in respect to the conferring of the countersign, except that the Commander-in-Chief shall promulgate it. It rests otherwise in implication from the fact of membership and the provisions of the Ritual.

That comrades in good standing are entitled to the countersign was held in Opinions cited in 1233 and 1234, page 209, BLUE-BOOK.

As there may be cases where a comrade, whether he has or has not a transfer card, may not be entitled to the countersign, the real question in this appeal would be more precisely expressed as follows: Does a comrade, by receiving a transfer card, become thereby disentitled to the countersign?

I think not. He remains a member of the Order for a year after the transfer is granted, without admission to membership to any Post. He has the entire year to seek renewed membership, and it is only at the end of the year that he becomes discharged from the Order.

In the mean time he is subject to discipline as a comrade of the Order.

He is not an active member of a Post, but is a comrade of the Grand Army of the Republic during the year.

Such was the construction given to Section 2, Article 4, Chapter 2, Rules and Regulations, in Opinion 135, August 12, 1882, 27[6], above. It was there held that a comrade who holds a transfer card not yet expired may hold his seat as a member of the Department Council of Administration.

The transfer card simply affects the Post membership, not the general comradeship of the individual. It is a provision by which a comrade may terminate his membership with one Post and seek it with another, without losing his membership in the Order, unless he fails within a year to acquire new membership in a Post.

It is urged that this ought not to be the law, as it would enable comrades to be present at Post meetings without paying the dues imposed on members.

While this is true, it is but the possible abuse that is likely to be incident to any privilege, but not likely to be indulged in often, especially as the comrade cannot renew his Post membership at will, but only on application and vote of the Post to which he applies. I advise a ruling to this extent: That a comrade's right to the countersign is not affected by the fact that he holds a transfer card. I do not think the appeal contains a statement of facts that warrants any further ruling, and I infer that this is all that is wanted in this case.

27[8] Opinion 84. W. C. February 27, 1878.

Where transfer is asked for and discharge is granted instead, membership is not changed.

Discharge granted at the same meeting at which application is made, void.

A comrade in good standing applies to his Post at a stated meeting, intending to apply for a transfer card, and is at the same meeting granted an honorable discharge. What is his *status?*

His *status* is the same as if he never applied for a transfer, for the reason that the honorable discharge was granted in violation of Section 3, Article 4, Chapter 2, Rules and Regulations, which require the discharge to be granted "at some subsequent meeting;" so that this discharge, being null and void, and this being the only action attempted to be taken on the application, the matter stands as if no action had been taken. (See also Opinion 61, December 5, 1874, 28[4], page 94.)

27[9] *Fee for Transfer.*

A By-Law fixing any fee for transfer card is void (107[3], page 179).

27[10] Decision 18. J. P. R.

Transfer cards to be issued when duly applied for.

Certain members who had paid all dues, and against whom no charges had been preferred, duly asked for transfer cards on the evening of August 24, 1887. The cards were not issued that evening, but a statement was made and signed by the Quartermaster showing the payment of all dues. On the

[Chapter 2.—Article 4.]

28* Honorable Discharge.

SECTION 3. Any comrade in good standing, on application to the Post Commander at a regular meeting, shall receive at some subsequent meeting an honorable discharge, signed by the Post Commander and attested by the Adjutant: *Provided*, That at

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Note 27[10] continued.

same evening these comrades were duly mustered as members of another Post. Before the cards were filled up, certain charges were preferred against the applicants; whereupon the Post Commander refused to sign the cards or to recognize their membership in the new Post.

Held, that the cards should have been issued, and that these comrades should have been reported as lost by transfer, and that their muster into a new Post was authorized, and constituted them members thereof.

27[11] DECISION 12. R. A. A.

The object of a transfer card is to enable a comrade to withdraw from one Post and join another at any time during the year from date of his card. During this time he is a member of the Grand Army of the Republic, and may visit Posts and receive the countersign.

Are comrades who are holding transfer cards, one dated November 19, 1889, the other dated May 8, 1889, entitled to the new countersign? Are they entitled to seats in Post meetings? Are they considered members of the Order?

OPINION 12. D. R. A. 1890.

The object of the transfer card is to enable comrades to withdraw from one Post and join another without severing their membership with the Grand Army of the Republic. For this purpose they are allowed one year from the date of issuing the card. During this time they are members of the Grand Army of the Republic, but not of any Post. They are entitled to receive the countersign, and may, by courtesy, visit Posts.

Section 2, Article 4, Chapter 2, Rules and Regulations.
Opinion 78, 25[1], page 79, BLUE-BOOK.
Decision 8, 27[7], page 90, BLUE-BOOK.

28[1] OPINION 45. W. W. D. February 26, 1873.

Discharge.

The Post must grant discharge if the comrade is in good standing.

Does Section 3, Chapter 2, Article 4, of the Rules and Regulations, make it compulsory for a Post to grant a discharge?

Is it necessary that the discharge be granted at once, or can it be delayed to afford opportunity for drawing up charges against the applicant?

the time of such application there are no pecuniary charges against him on account of the Post. A comrade thus discharged can be readmitted by filing a new application, to be regularly referred and reported on, and upon receiving a two-thirds vote of the members present and voting at a regular meeting, he shall be admitted without re-muster, on taking *anew* the obligation (1–4).

Note 28[1] continued.

I think the intent of the section is clear. A person who is "in good standing" is one who has committed no offence for which charges may be preferred. When the application is received the section referred to requires that it shall be continued to a subsequent meeting, for no other purpose than to ascertain the standing of the applicant, and to give opportunity to comrades to prefer charges against him if he has committed any offence against the Order. The discharge may be delayed long enough to give time for the preparation of charges, but not vexatiously or without probable cause, or for an unreasonable time.

If, after reasonable delay, no charges are preferred, it is compulsory upon the Post to grant the discharge.

28[2] OPINION 88. W. C. May 16, 1878.

Discharge.

A Post has nothing to do with granting an honorable discharge. Application for discharge may be withdrawn.

A comrade in good standing applies to his Post Commander, at a regular meeting, for his discharge. Can such comrade, before his discharge is granted, withdraw his application without the consent of a majority of his Post at some subsequent meeting?

I am of opinion, under Section 3, Article 4, Chapter 2, Rules and Regulations, a Post has nothing to do with the honorable discharge of a comrade. Under said article it is a comrade's right, if he is in good standing, to make application, at a regular meeting, to the Post Commander, and at a subsequent meeting to have his discharge, which it is the duty of the Post Commander to sign and the Adjutant to attest.

If I am correct, then it is unnecessary to pass upon the question of the comrade's right to withdraw his application in this case. It appears that no question has arisen between the applicant and the Post Commander, and that would seem to be a matter solely between themselves, with the right of either party to appeal to higher authority.

28[3] DECISION 6. R. B. B.

Discharge.

Has a comrade who is honorably discharged a right to visit a Post?

He has not.

284 OPINION 61. W. W. D. December 5, 1874.

Withdrawal Card.

Where a comrade applies for a withdrawal card, receives it and retains it without any expression to the Post that he desired, not a withdrawal card, but a transfer card, he cannot, after he has applied to the Post for admission again and has been rejected, claim it to be a mistake and demand a transfer card.

Department Commander has no authority to interfere.

H. M., a comrade in good standing, addressed a communication to the Post in these words:

I respectfully ask for my withdrawal card from your Post. Inclosed please find one dollar for dues for the quarter ending June 30, and fifty cents to pay for my card. Hoping it will meet with your approval,

I remain yours in F., C., and L.,

H. M.

P. S.—Forward the card to me as soon as possible.

H. M.

The Commander of the Post understood this to be a request for a discharge, and on July 5 granted and forwarded such discharge. Some time afterwards H. M. applied to be readmitted to the Post, and his application was voted upon and rejected. It appears from the report of the Inspector, who was directed to examine this case, that H. M. intended by his first application to make a request for a transfer card, but after receiving a discharge he was advised to regain his membership by a new application. After his rejection he applied to the Department Commander to order a reconsideration of the ballot against him on the ground that such ballot was "wilfully, designedly conducted, so as to oust him from the Post," and was the action of J. F., a comrade of the Post, "on an old political bias, for political purposes." In the appeal certain charges against this comrade are recited, apparently to substantiate the statement on which the appeal is founded, and to show personal hostility on his part.

The Department Commander, having received the report of the Department Inspector on the facts of the case, issued a special order "rescinding, annulling, abrogating, and declaring void" all the acts and doings of the Post in respect to the case, and restoring the said M. to membership in the Post, and directing the Post, upon his application, to grant him a transfer card.

From this decision the Post appealed to National Head-quarters:

First. Because the appeal of M. was not forwarded through the proper channels.

Second. Because the Post were justified in the construction they put upon the application of M., he having been an officer of the Post for nearly three years, and competent to understand the proper terms in which to apply for a transfer card if he desired one.

Third. Because M. never informed the Post that they had mistaken the meaning of his application, or asked them to rectify the mistake, until after he had made a new application to be admitted and this application had been rejected.

Fourth. Because M., in applying for readmission in the ordinary form, recognized the fact that he was no longer a member of the Order, and waived all right to have the former action of the Post reviewed.

Fifth. Because a Department Commander has no power to annul a ballot, or to inquire into the motive of those who vote to reject an application.

Sixth. Because the action of the Post can only be set aside on evidence that there was a conspiracy to defraud M., contrary to the Rules and Regulations, of which there is no evidence.

Seventh, Eighth, Ninth, and Tenth. Because various statements in the appeal, reflecting on the Post, are untrue.

Upon the full record of the case referred to me, I am of opinion that the appeal of the Post must be sustained.

I am reiterating the substance of a former opinion, and the ruling of a former Commander-in-Chief, in saying that when a comrade of the Grand Army of the Republic deposits a ballot upon the question of the reception of an applicant, he is only responsible to his own conscience for this exercise of his right of choice. From the very nature of the act he cannot be called in question for it.

But it does not follow that every ballot is therefore valid. The applicant may be ascertained to have been ineligible, or his application may not have been regularly before the Post for its action, and in such cases affirmative action would be invalid; or he may have been already a member of the Post, and in such case a rejection would be harmless. If the Department Commander were justified in annulling the discharge given to M., that act would necessarily avoid any subsequent proceedings of the Post on M.'s application to become a member. If he were already a member, his application and the ballot upon it would be alike idle.

The first objection of the Post can hardly affect this case, as, if the Post is sustained in holding to the validity of the discharge, M. was not a member of the Order, and might well address directly any of its officers. They might, however, draw from this circumstance an inference that M. understood himself to be outside the Grand Army.

The case rests, then, upon the decision of the question, whether the second, third, and fourth points of the Post's appeal are well taken, and I have no hesitation in saying that I think they are conclusive. The first mistake arose on the part of the applicant. When he used language capable of two constructions, he gave the Post the right to act upon such of the two as they chose to place upon it, and it seems to me that they did take the more natural construction. A withdrawal, to be sure, might be absolute or only to join another Post; but, if designed to be limited, the limitation would naturally be expressed. A person who had been officially familiar with the business of the Post for a long time ought to have qualified an application for leave to sever his relations with the Post, unless he desired to leave the Order altogether.

But, when the discharge was received, if it had been immediately returned with a request to have a transfer card substituted, no doubt, on reasonable proof that a mistake had been committed, the Post would have corrected it, or perhaps, on application, the Department Commander might have compelled such correction.

It does not appear, and it is expressly denied by the Post, that any such request was made. The discharged comrade seems to have accepted the situation and applied again for admission to membership. I cannot look upon this act as anything else than an absolute waiver of any claim to be considered still a member, and of any right to challenge the previous action of the Post. Indeed, M. himself takes the same position in his communication to the Department Commander. He does not apply to have the transfer card

substituted for a discharge, but asks "for a reconsideration of the final ballot." He desires to renew his attempt to join in the same mode that proved unsuccessful before.

I think, then, that the action of the Post should be sustained, inasmuch as, if mistaken, the mistake was caused by the applicant, and was acquiesced in by him in such a manner as to now estop him from appealing from it. It is not material to consider the various allegations of misconduct made by M., and denied by the Council of Administration. There is no evidence to support them, and the defence is *prima facie* complete; a demurrer would have been the more proper answer.

285 DECISION 7. L. F.

1. The fact that an honorable discharge was erroneously granted on the same evening on which the application was filed does not render invalid a second one granted at a subsequent meeting, and a mere request not to sign such second discharge, made to the Commander on the street, will not alone operate as a withdrawal of the application.

2. The omission of the initial of the middle name of the Commander in the signature of the discharge does not render it invalid.

An application for an honorable discharge was duly presented and a discharge granted at the same meeting and sent to the applicant; such discharge was manifestly void and was so held on reference of the question to the Department Commander.

At a subsequent meeting another discharge was granted, no new application having been made.

Pending this action, the comrade at one time, on the street, requested the Post Commander not to sign another discharge, but took no other steps to withdraw his application.

The name of the Post Commander was F. A. S., and the discharge was signed F. S., but it appeared that it was his custom to so sign his name, and that his name so appears on all his military records.

The party receiving the discharge appealed to the Department Commander, assigning as reasons for appeal:

1. That a discharge granted at the same meeting that the application is made, the discharge being void, that makes the application void.
2. That he withdrew his application by saying to the Post Commander, on the street, not to sign another discharge.
3. That the discharge is void, not being signed F. A. S., the name the Post Commander is known by.

The Department Commander held the discharge valid, and from that decision an appeal was taken to the Commander-in-Chief.

OPINION 7. H. E. T. December 7, 1886.

Whether an application for discharge once filed can in any way be withdrawn without the assent of the Post Commander is a question not necessary to decide. A simple request made on the street not to sign a discharge already applied for

certainly cannot operate as such a withdrawal, and the Post Commander was justified in declining to so consider it.

The application being on file, the Post Commander committed no error in issuing the second discharge, the first having been clearly void. The case is not parallel with the one decided in Opinion 84, 27 [8], and referred to in the appeal.

The objection that the Post Commander omitted the initial of his middle name is not tenable, especially in view of the statement that it was his custom to sign official papers in that way.

In my opinion the decision of the Department Commander was correct and should be sustained and the appeal dismissed.

28 [6] DECISION 4. J. P. R.

*Past Honors.—A comrade honorably discharged from the Order and afterwards rejoining it is not entitled to his past honors, and the Commander-in-Chief has no authority to restore him thereto.**

OPINION 4. W. G. V. March, 1888.

This case is not an appeal, but an application by Comrade K. to the Commander-in-Chief. Comrade K. was a member of our Order from 1866 to 1871, inclusive, and during that time held numerous offices therein. In 1871 he withdrew from the Order by an honorable discharge, and rejoined it in 1885. He asks, *first*, whether he is debarred from wearing the badge of the office which he held as a Past Department officer before his retirement as aforesaid. And, *second*, if thus debarred, then that the Commander-in-Chief may remove "the embargo" and permit him to wear the badge of his rank before his said discharge.

The answer to the first question is found in Opinion 9, of Judge-Advocate-General Taintor (49 [18], page 134, BLUE-BOOK), wherein it was held that a past officer, who had ceased to be a member of the Order by honorable discharge, or by disbanding of his Post, is not entitled to his past honors on again becoming a member of the Order. (See also Opinion 94, 49 [2], page 127, BLUE-BOOK.)

Second. In answer to the prayer for relief, there is no express power conferred on the Commander-in-Chief to grant such relief, and, in my opinion, there is no such implied power.

* See amendment to Article 2, Chapter 3, which authorizes Department Encampments to restore honors lost by Past Post Commanders.

28 [7] DECISION 7. J. P. R.

The Adjutant of a Post, upon being discharged from the Order may properly "attest" his own discharge.

OPINION 7. W. G. V. April, 1888.

Can an Adjutant of a Post properly *attest* his own discharge? A discharge is not complete until it is attested by the Adjutant. It is required, the same as the signature of the Post Commander is required. "Signed by the Post Com-

mander and attested by the Adjutant" is the language of Section 3, Chapter 2, Article 4, Rules and Regulations. That section applies, in terms, to *every* comrade in good standing, to comrades who are officers, as well as to comrades who are not officers. An officer applying for a discharge continues to be an officer until his discharge is granted or he is released from duty. While in office he must perform the prescribed duties of his office. One of the duties of an Adjutant is to *attest* discharges. His own discharge being incomplete until attested by himself as Adjutant, the duty is upon him the same as it would be if it was the discharge of any other comrade. The act is purely ministerial, and pertains solely to the office and not to his comradeship, which is the matter involved in his discharge. I am of the opinion that an Adjutant may attest his own discharge, and that this appeal must be overruled.

28[8] DECISION 13. R. A. A.

The granting of a discharge to a comrade at the same meeting in which his application is made is clearly in violation of a plain provision of the Rules and Regulations.

See Section 3, Article 4, Chapter 2, Rules and Regulations.

Comrade B., at a regular meeting of the Post, made application, in writing, for an honorable discharge, and requested immediate action thereon. The Senior Vice-Commander, who was presiding, directed the Adjutant to at once make out and deliver to the comrade an honorable discharge, which was accordingly done. At the next meeting of the Post the legality of the action granting a discharge to a comrade at the same meeting at which the application was made was raised, and the Commander of the Post ruled that such action was irregular. Comrade B. having surrendered his discharge, the Commander directed that his name be placed on the roll of the Post as a member. From this ruling and action of the Commander the Senior Vice-Commander appealed to the Department Commander. The Department Commander sustained the Post Commander, and from his decision the Senior Vice-Commander appeals to the Commander-in-Chief.

OPINION 13. D. R. A. 1890.

Any action by a Post or its officers, in violation of the provisions of the Rules and Regulations, is null and void. On the subject of honorable discharge, it is provided by Section 3, Article 4, Chapter 2, Rules and Regulations, that "Any comrade in good standing, on application to the Post Commander at a regular meeting, shall receive *at some subsequent meeting* an honorable discharge, signed by the Post Commander and attested by the Adjutant: *Provided*, That at the time of such application there are no pecuniary charges against him on account of the Post." Under this provision three things are required:

1. The application must be made at a regular meeting of the Post.
2. At the time of making the application, that no pecuniary charges exist against the applicant on account of the Post.
3. Action can only be had at a meeting subsequent to the one at which the application was made.

The granting of the discharge to Comrade B., at the same meeting at

which his application was made, was clearly in violation of a plain provision of the Rules and Regulations, and was therefore null and void.

I am of opinion that the action of the Commander, in setting aside the previous action of the Senior Vice-Commander and restoring Comrade B.'s name to the roll of the Post, was properly sustained by the Department Commander, and that the appeal therefrom should be dismissed.

289 DECISION 21. R. A. A.

Every member of the Grand Army of the Republic has a right to withdraw from his Post, provided his dues are all paid and no charge exists against him. The failure of a Post Commander to issue a requested discharge until the dues of another quarter are payable does not bind the comrade who had previously asked for his discharge.

On December 19, 1885, B. made a written application to the Post Commander for a transfer card, his dues having been paid to January 1, 1886. No charges existed against B. at the time of making such application. For some reason which does not appear no action was taken by the Commander at the time the application was made in December. At a subsequent meeting of the Post, the date of which is not given, but I presume it was in January following, the Commander's attention was called to it, when he refused to issue the card unless Comrade B. would pay an additional fifty cents, being the dues for quarter commencing January 1, 1886. This B. refused to do, and as a consequence no transfer card was ever issued to him.

In April last this matter was presented to the Department Commander, and on April 30 he issued an order to the Post to issue a transfer card to Comrade B., to date from December 19, 1885. From this order the Post appeals.

OPINION 21. D. R. A. 1890.

Section 2, Article 4, Chapter 2, of the Rules and Regulations, provides that—

Any comrade against whom no charges exist, and who has paid all dues, shall receive, upon verbal or written application to the Commander, at a meeting of the Post, a transfer card attested by the Adjutant.

This language is very explicit. It gives to every comrade the right to withdraw from his Post at any time that he may desire to do so, upon payment of all dues that he may be owing to the Post up to the date of his making such application, provided that at the time there are no charges pending against him. These conditions being fulfilled, there is no discretion vested in the Commander of a Post to withhold the card. In this case Comrade B. asked for his card on December 19, 1885, having paid all his dues to January 1, 1886; no charges existed against him. It was the duty of the Commander to have at once ordered his Adjutant to issue the transfer card. The mere fact that the Post Commander held the matter until after the 1st of January, 1886, and until another quarter's dues had commenced to run, without taking action, was no fault of Comrade B.'s, and he could not therefore be charged

[Chapter 2.—Article 5.]

29* Transfers for Members of Disbanded Posts.

SECTION 4. Members of disbanded Posts, who were in good standing at the time of such dissolution, shall receive from the Assistant Adjutant-General of the Department transfer cards, which shall have full force.

ARTICLE 5.

MEETINGS.

30* Stated Meetings.

SECTION 1. The stated meetings of each Post shall be held at least monthly.

Note 28 9 continued.

dues by the Post for the negligence of its Commander, which in this case appears to have been wholly wilful.

The action of the Department Commander in ordering the Post to issue a transfer card to Comrade B., to date from December 19, 1885, the time he made his application therefor, should be sustained, and the appeal of the Post dismissed.

29[1] OPINION 19. W. W. D. January 2, 1872.

1. Disbanded Posts, members of. Transfer cards for.

2. Assistant Adjutant-General to grant transfer cards.

When a Post has voted to disband, and has surrendered its charter, do its officers still retain the authority to grant transfer cards to members wishing to join other Posts?

The question is decided by Chapter 2, Article 4, Section 4, of the Rules and Regulations. When a Post has voted to disband and surrender its charter, all the papers and property of the Post are to be turned over to Department Head-quarters. If any of the members desire to join other Posts, the record of the Post, in the hands of the Assistant Adjutant-General, will show the standing of such members, and he will grant transfer papers to such as were in good standing and who desire it.

30[1] OPINION 34. W. W. D. April 20, 1872.

1. Post cannot hold executive sessions.

2. Post has no executive powers.

3. Post cannot exclude a Department officer.

4. Post may consult its own convenience in regard to admitting comrades visiting from other Posts.

The questions proposed are, Can a Post refuse to admit a Department officer to its rooms, on the ground that it is holding an executive session? Can a Post exclude comrades belonging to other Posts on the same grounds?

Special Meetings.

SECTION 2. Special meetings may be convened by order of the Post Commander.

Quorum.

SECTION 3. Eight members qualified to transact business shall constitute a quorum at any meeting of the Post, excepting in Posts of less than fifty members in good standing, when five members shall constitute a quorum.

SECTION 4. Posts may by By-Laws or Rules of Order provide for an adjournment of Post meetings before completing the Order of Business prescribed in the Ritual (2).

Note 30[1] continued.

1. Our Regulations do not recognize any such thing as an executive session. The term is a misnomer when applied to any meeting except a session of a legislative body, which possesses also certain executive powers, like the power which the United States Senate has of confirming or rejecting certain appointments of the President, or its power of ratifying treaties, etc.

2. A Post of the Grand Army of the Republic has no executive powers, and consequently cannot hold executive sessions.

3. There may frequently come before a Post business which it would not care to have discussed by or before comrades not members. In such a case, on the approach of a Department officer on duty, such business should be temporarily laid on the table and the officer admitted.

4. Comrades from other Posts could not, however, claim the same precedence, and the Post would be at liberty to consult its own convenience about admitting them, with due regard always to the principles of courtesy and fraternity.

30[2] NOTE.—Section 4 was added at the San Francisco Encampment. This amendment annuls Opinions 85, February 27, 1878, and 103, May 6, 1879, which held that a motion to adjourn was not in order. R. B. B.

30[3] DECISION 29. L. F.

Post Meetings. Change of Location.

A Post may hold part of its meetings at one point and the rest at another, in the same town, unless the charter expressly requires that its powers be exercised in some particular section.

Can a Post established at L—— hold a meeting each alternate month at C——, a village in the same township?

Opinion 29. H. E. T. May 11, 1887.

Unless the charter expressly requires the Post to exercise its powers in a particular section of the town, I think its meetings may be held at any point in the limits of the township; nor do I see any illegality in holding part of the meetings at one point and the rest at another.

80[4] **Decision 24. L. F.**

Meeting on Sunday is not illegal, unless forbidden by law of the State where Post is located.

Opinion 24. H. E. T. April 1, 1877.

See statement to 7[2], page 21.

2. Whether good or bad taste was shown in holding a meeting of the Post on the Sabbath is not a matter for discussion here; the simple question is, Was the action legal or illegal?

Our Rules and Regulations are silent on this point; if illegal, it must be because of some infraction of the law of the State where the Post is located. After an examination of the law of Illinois on the subject, I do not think that the action of the Post, so far as it appears from the record, came within the prohibition of the statute.

I am therefore of the opinion that the action of the Department Commander should not be overruled, and that the appeal should be dismissed.

80 **Decision 9. S. S. B.**

Majority Vote of a Post.

Whenever anything is to be done, or refused, by the action of the Post, by approval of the Post, or by order of the Post, or any terms of similar import, the term "Post" in that connection means a legal Post meeting, where a majority of those present and voting (a constitutional quorum being actually in session) have voted in favor of or against a proposition, whatever it may be.

Opinion 9. C. H. G. December 4, 1885.

A Department Commander wishes a construction placed upon the section in the Manual which provides that sentences of courts-martial shall be approved by a majority vote of the Post. The question is whether, owing to the gravity of the punishment which may be inflicted, this means simply a majority of those present, or a majority of the whole Post.

It is my opinion that whenever anything is to be done or refused by the action of the *Post*, or by the approval of the *Post*, or by order of the *Post*, or any terms of similar import, that the term *Post* in that connection means a constitutional quorum, actually in session, presided over by a legal officer, and transacting business. It has always been held in the construction of parliamentary law that the terms "the House and Senate," and terms of similar import,

ARTICLE 6.

OFFICERS.

31 Post Officers.

SECTION 1. The officers of each Post shall be: A Post Commander, a Senior Vice-Post Commander, a Junior Vice-Post Commander, an Adjutant, a Quartermaster, a Surgeon, a Chaplain, an Officer of the Day, an Officer of the Guard, a Sergeant-Major, and a Quartermaster-Sergeant.

32* Eligibility to Office.

SECTION 2. All members of the Post, in good standing, shall be eligible to any office in the Post.

Note 30[5] continued.

mean a majority of a constitutional quorum. Or, in other words, it means a constitutional quorum legally organized to transact business; and when a majority has voted upon a pertinent question that action is the action of the body. A line is drawn in the Constitution in many States in this way; certain things may be done by the House or Senate; and in all cases within my knowledge the construction that has been given to that language is that it is the act of the majority of a quorum. But in certain other cases, as, for instance, in Ohio, for the passage of a bill, the election of United States Senators, or the election of an officer of the body, it is required that they shall receive a majority of the votes of all *the members elected thereto.* It means that there shall be voting a majority of all the members elected. But when the other language is used the other construction has uniformly and universally prevailed. The action of the House of Representatives in Congress is always understood to be, and is always held to be, the action of a majority present and voting. It was held by the Ohio Supreme Court that when the law provided that the Board of Education of certain townships might do certain acts, and it appeared by the record that the Board consisted of fifteen, and that at the meeting when the action was taken eight were present and five voted in the affirmative, the court held the action legal, as being the action of the Board of Education.

I do not hesitate, therefore, to say that the construction to be given to the term "Post" is that it is a legal Post meeting, at which a majority of those present and voting have voted in favor of the proposition, whatever it may be. It seems to me that no other construction can be given to the language.

32[1] OPINION 107. W. W. B. January 6, 1880.

A comrade elected to a Department office is not thereby removed from the jurisdiction of his Post.

Does the election of a comrade to a Department office remove him from the jurisdiction of the Commander of the Post of which he is a member?

When a Department officer *is on duty as a Department officer*, he is not subject to the orders of the Commander of the Post, but he is entitled to the

[Chapter 2.—Article 7.]

33* Trustees.

SECTION 3. Posts may elect a Trustee or Trustees not exceeding three in number, to be Trustee or Trustees of the Post, and the same number to be Trustee or Trustees of the Relief Fund of the Post, who shall hold their offices until their successors are elected and qualified.

ARTICLE 7.

ELECTION OF OFFICERS.

34* Election.

SECTION 1. The Post officers (the Adjutant, Sergeant-Major, and Quartermaster-Sergeant excepted) shall be elected at the first stated meeting in December, by ballot, unless a ballot be dispensed with by unanimous consent (1). They shall be installed into their respective offices at the first stated meeting in January following, and such installation may be conducted publicly (2) at a special meeting to be held for that purpose, when

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Note 32[1] continued.

rights and privileges of a member of his Post, if he sees fit to avail himself of them. He must pay his dues, and he may at the same time be an officer of the Post; and, when acting as a member or officer of the Post, he is under the jurisdiction of the Post Commander.

The Post Commander, by virtue of his office, is a member of the Department Encampment, and may himself be a Department officer. (See 49[7].)

33[1] NOTE.—This Section was added at the Minneapolis Encampment, 1884. For Duties of Trustees, see Sections 9–13, Article 8, Chapter 2, page 124.

R. B. B.

34[1] NOTE.—When, by unanimous consent, it is desired to dispense with a formal ballot, two forms may be followed:

1st. By resolution "that a ballot be dispensed with, and Comrade —— be elected to the position of —— by acclamation."

2d. "That the Adjutant cast the ballot of the Post for Comrade —— for the position of ——."

The latter form has been sometimes used in the National Encampment, but the first is more clearly in accord with the privilege granted of dispensing with a ballot.

Either resolution requires unanimous consent. Without that, a full ballot must be had.

R. B. B.

no part of the opening or closing services or signs of recognition shall be used.

Installation and Appointment.

At the installation of officers, the Post Commander shall appoint the Adjutant, and upon the recommendation of the Adjutant and Quartermaster respectively, he shall also appoint the Sergeant-Major and Quartermaster-Sergeant, and may remove these officers at his pleasure. They shall enter upon their duties at once; and all officers, whether elected or appointed, shall hold office until their successors are installed (3–10).

34[2] NOTE.—The words "and such installation may be conducted publicly" were inserted at Minneapolis, 1884. The remaining words of this paragraph were added at Portland, 1885. R. B. B.

34[3] OPINION 90. W. C. August 2, 1878.

Officer must be installed before he can act.

Can a Department officer be considered, and act as such, without being regularly installed?

In my opinion he cannot. The old incumbent does not retire, and there is no vacancy until the officer is duly installed. (See Section 2, Article 5, Chapter 3, Rules and Regulations.) This applies equally to Post officers.

34[4] OPINION 98. W. C. January 21, 1879.

Installation of Post officers in December is void.

If a Post Commander take upon himself to install in December the newly-elected officers of his Post, instead of January, as prescribed by the Rules and Regulations, would not the installation be void, and would not the old officers hold over until their successors were duly elected?

Yes.

34[5] DECISION 13. J. P. R.

Installation in December is illegal.

A Post Commander-elect cannot legally be installed until after December 31.

[Chapter 2.—Article 7.]

846 OPINION 102. W. C. March 29, 1879.

Senior Past Post Commander may install. Officer detailed to install has no authority until he reports for duty. Officer must be installed before he is qualified to act.

A certain comrade is specially detailed to muster the officers of a Post at a certain time, at which time he fails to announce himself to the Sentry and to appear, though present in an adjoining room and informed that the Post is ready, and the Senior Past Post Commander musters in the officers of the Post, and I am asked as follows:

1. Were these officers regularly installed?

My answer is, yes. (See third paragraph of first page of Installation Service.)

2. Had the comrade so detailed any authority under the order, so far as the Post is concerned, until he had presented himself to the Post as mustering officer?

I think not.

3. Is any officer elected but not installed qualified to act?

No.

847 OPINION 76. W. C. October 18, 1877.

Commander-elect is not disqualified from assuming the duties of his office by reason of any suspicions against his integrity in another position.

When information is given the Department Commander, charging that an election of Post Commander is illegal, then he, the Department Commander, may issue an order postponing the installation until investigation is had. And it makes no difference how the information was given to the Department Commander.

A Quartermaster whose accounts were being investigated by a committee of his Post, was elected Commander of his Post, to fill a vacancy, at a meeting called for that purpose, at which meeting, and before proceeding to an election, an order was passed remitting the dues of all comrades in arrears, and by a vote of the Post "the second meeting following" was fixed as the time for installation, and at the meeting next following the election a vote was passed giving said committee until one week after installation to report. Certain members of the Post claim that the "election was irregular and fraudulent, and ought not to stand," and asked that a committee to investigate said election be appointed, which paper was forwarded to Department Head-quarters. Whereupon from said Head-quarters an order was issued postponing the installation and appointing such committee. The installation was postponed, and the Commander-elect protested against said order as illegal and void, on the ground that the "appeal [meaning the paper heretofore alluded to] was

not in regular form," and did not go "through the proper channels," and asked that said order be revoked. The following questions were referred to the Judge-Advocate-General for his opinion, to wit:

1. Should the order referred to above be rescinded?

2. Is this Quartermaster competent, in any event, to be installed as Commander, while yet his Quartermaster's accounts are unsettled, and before he has been formally released by the Post?

1. If by the first question is meant, Is the order a valid one? I am of opinion that the validity of the order of the Department Commander in this case is not affected by the manner in which said paper or appeal was forwarded to Head-quarters (and how it was forwarded don't appear), for the Department Commander had a right to order such investigation, if he believed it for the best interests of the Order, or his duty upon ascertaining the facts, no matter by what means obtained, or even upon suspicion of the facts, without any communication on paper whatever. This paper may have been irregularly forwarded, and if so, it should have been returned with such reprimand or directions for punishment as the Commander of the Department saw fit, if any. Or the Post might take proper steps to punish such infraction of the Rules, if it was considered of sufficient importance, but it clearly does not invalidate the order of the Department Commander. There is no provision in the Rules and Regulations for the appointment of investigating committees by Department Commanders, but I am of opinion that such power may safely be inferred from the undefined general powers which such executive and administrative officers must necessarily have, and that this will not be disputed. If the question is meant to be construed literally, to wit: Should the order be rescinded? Then I answer that the question is wholly one of policy or expediency, and is to be decided only by the authority from which it emanated.

2. I am of the opinion, further, that this Quartermaster or Commander-elect is not disqualified from being installed by reason of any suspicions against his integrity as a Quartermaster, or by reason of the appointment or proceeding of any committee to investigate his conduct. Committees of investigation are always proper, and sometimes necessary, but no direct effect results from their appointment, investigations, or reports. It is the order from the proper authority, or the court-martial which follows, that produces the direct effect. The remedy for wrong-doing on the part of a comrade is simple and direct,—*i.e.*, by a court-martial, on charges preferred,—and when charges are preferred against an officer of a Post, the Department Commander may suspend the accused from office.

The case itself presents other interesting questions, but I have confined myself to the questions propounded, and it will be noticed that in answering the second question I purposely avoided the consideration of the effect of any action upon an unfavorable report from the committee of investigation into the election appointed by Department Head-quarters.

84[8] DECISION 11. S. S. B.

A. was regularly elected Post Commander, but his Post set the election aside, and thereupon elected B., who was installed and served to the end of the term. The action of the Post in setting aside A.'s election was erroneous, but under the rule, de facto, B. is a Past Post Commander and entitled to the honors incident thereto.

[Chapter 2.—Article 7.]

Opinion 11. C. H. G. February 16, 1886.

A Department Commander propounded the question: "Referring to the decision of Judge-Advocate-General Grosvenor, in the matter of the appeal (see Decision 5, 36th page 115), I beg to ask for information as to the effect of this decision upon the *status* of M. L., Past Commander of —— Post. This comrade was elected Post Commander, and served his term; but if W. was illegally kept out of the office of Post Commander, then L. was illegally elected Post Commander. If so, is he now entitled to his rank as Past Post Commander?"

The reply was sent by telegraph.

L. clearly entitled to rank. He served his term without a contest.

C. H. Grosvenor,
Judge-Advocate-General.

In this case the rule *de facto* applies; for it would not do to hold that, after the officer had served his term, even if erroneously placed in the office, without a trial, so far as he was concerned, he could be stripped of the honors incident to the same.

849 Decision 4. W. W.

A Department Commander does not possess the power to issue dispensations fixing the time for installation of Post officers, unless it may be in cases where a Post has failed to install its officers or make provision therefor, within the time prescribed by the Rules and Regulations.

The Rules and Regulations, Section 1, Article 7, Chapter 2, requires that the officers of a Post shall be installed into their offices at the first stated meeting in January after their election. This section further provides for public installation if desired by the Post. Can a Department Commander grant a permit to a Post to hold a public installation upon any other night than the first meeting night in January after the election?

Opinion 4. J. B. J. January 20, 1889.

The Rules and Regulations seem sufficiently to provide for a public installation of the officers of a Post without a special dispensation from the Department Commander.

By the provisions of Section 1, above referred to, an installation may be either public or private. If the Post desires an installation of its officers on some other time than the stated meeting in January, a special meeting for that purpose may be called. Section 2, Article 5, Chapter 2, Rules and Regulations, provides the manner of calling a special meeting. It reads:

Section 2. Special meetings may be convened by order of the Post Commander.

Thus it will be seen that a public installation can be had at any time after the stated meeting in January by the Commander calling a special meeting of the Post for that purpose. Likewise, the same section provid[illegible] for a private

35* Balloting.

SECTION 2. In case of a ballot for officers, a majority of all the votes cast shall be necessary to a choice. If there is no elec-

Note 34[9] continued.

installation of Post officers that shall take place at the stated meeting in January. By the terms of Section 4, Article 5, Chapter 2, Rules and Regulations, "Posts may by By-Laws or Rules of Order provide for an adjournment of Post meetings before completing the Order of Business prescribed in the ritual." Therefore, such private installation may by the Post be postponed to some other time by adjournment. It follows, therefore, that since the time of installation within these prescribed regulations is left to the Post, that the Department Commander does not possess the power to issue dispensations fixing the time, unless it may be in cases where a Post has failed to install its officers or make provision therefor within the time prescribed by the Rules and Regulations.

34[10] DECISION 11. R. A. A.

A comrade assuming office without having been first installed is not a legal officer and is not afterwards entitled to rank as a past officer.

A comrade, W., at the organization of the Department was elected Commander. At the time of his election he was absent from the State, but upon being notified of his election, without being installed, assumed command, appointed his Assistant Adjutant-General and other subordinate officers, and issued orders. He remained out of the State during the entire period of his administration, and was never installed. On December 15, 1884, the Council of Administration met and elected a Department Commander in place of Comrade W. This action was taken upon the ground that Comrade W., having never been installed as Department Commander, there was a vacancy in such office. The new Commander thus elected assumed command of the Department and served until his successor was elected and installed.

OPINION 11. D. R. A. 1890.

It has been decided that a Department officer must be installed before he can act. (Opinion 90, 34[3], page 105.)

The fact that this comrade assumed command and acted as Commander of the Department without first having been installed, did not make him a lawful officer. In order to qualify a Department Commander to act as such, it is necessary that he be both duly elected and installed. Comrade W. having never been installed Department Commander, cannot be held to have served as such, and is therefore not entitled to the rights and privileges of a Past Department Commander.

35[1] OPINION 59. W. W. D. January 22, 1874.

In counting the votes cast to determine whether or not a candidate has a majority, ignore all ballots cast for ineligible candidates.

At the annual election of Officer of the Day there were three candidates nominated. Upon the first ballot there was no choice. A second ballot was

tion on the first two ballots, the name of the comrade receiving the lowest number of votes shall be dropped, and so on in successive ballots, until an election is made (1, 2).

Note 35[1] continued.

ordered, and the Commander called the attention of the Post to the Regulations, Chapter 2, Article 7, Section 2, requiring the person who had received the lowest number of votes to be dropped. (The "dropping" was then required after the first ballot.)

The ballots were collected and counted, and the vote stood: C. 37; H. 36, and one ballot for D., the candidate who had received the lowest number of votes on the first ballot.

The Commander ruled that the scattering vote (for D.) should be counted in the aggregate, and that therefore there was again no choice.

From this decision an appeal is taken. (See *Note* (*), page 111.)

The Commander then ordered a third ballot, and after all had voted who desired, declared the polls closed. The ballots were counted by the tellers, and announced to the Commander as follows:

Whole number of votes cast, 74; necessary for a choice, 38. H. has 37, C. has 37. The Commander not having voted, then deposited a ballot for C., and declared him duly elected. (See *Note* (†), page 111.)

From this action an appeal is taken by H.

The questions raised are points of parliamentary law, and do not involve the Regulations of the Grand Army. I am of the opinion that, according to the best usage in this country, the presiding officer's decision was erroneous in both cases; but having reached that conclusion in regard to the first ruling, it is unnecessary to discuss the second.

In counting the number of votes cast to determine whether or not a candidate has a majority, the settled rule seems to be to ignore all ballots cast for ineligible candidates. Certainly this is the rule when the candidate is ineligible under the rules governing the assembly, and attention is called to the Regulations at the time the polls are opened. The contrary decision would put it in the power of the minority, who voted for the candidate who stood lowest, to postpone a choice indefinitely, and would defeat the object of the Regulation. The scattering ballot should not have been counted in the "whole number of votes cast," and consequently C. received a majority, and was elected.

In Cushing's "Law and Practice of Legislative Assemblies," Chapter 6, paragraph 180, page 67, the following language is used upon the point in question:

In reference to elections in which an absolute majority is requisite for a choice, and in which, consequently, the whole number of votes received is first to be ascertained, votes given for ineligible persons must of course be excluded from the enumeration, for the reason that, as the whole balloting would be void, and all the votes were excluded if they were all for such candidates, it would be preposterous to enumerate such votes when they constituted a part only of any of the votes given in. If, in consequence of such exclusion, the result of

the election would be different from what it would otherwise be, the whole proceeding must, perhaps, be held void or valid, according as the electors have actual or presumed knowledge of the ineligibility of the persons for whom the excluded votes are given.

The appeal from the first decision is, in my opinion, well taken, and the candidate-elect should be installed.

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* The same question was raised at the Minneapolis Encampment. (See pages 197–199, *Journal.*)

Opinion 59, above quoted, was cited, and the Senior Vice-Commander-in-Chief (in the chair) ruled in substance that the Opinion did not cover the point then raised. A vote had been cast for E., and E. was eligible to office and the vote should be counted; but having received the lowest number of votes, E. could not be voted for on the next ballot.

In this view of the case a single vote could be cast for some other comrade on successive ballots, and so long as D. was not the lowest he could not be dropped.

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† This point seems not to have engaged the attention of the Judge-Advocate-General. There is a tie vote. "The Commander not having voted, then deposited a ballot for C., and declared him duly elected."

Neither the Commander nor other member had a right to vote after the ballot had been closed. The Commander has no right or privilege on a vote by ballot by virtue of his position, but must vote when his name is called or in regular order.

In the United States Senate, the Vice-President, not being a member of the body, cannot vote except in case of a tie; the right and privilege of then voting being accorded him by the Constitution.

In the House of Representatives, the Speaker, on a call of the yeas and nays, is called last under the rules, but his vote is recorded without reference to its result. He votes as a member of the body.

When the balloting appears to be over, the Commander should ask, "Have all the comrades voted?" and permit any entitled who had failed to do so to vote, and should then declare "The ballot is closed; the tellers will proceed to count the ballot."

If the ballot is a tie, balloting must proceed anew until an election is had.

The details of the conduct of an election is left to the action of each Post, but any rules thereon ought to be incorporated in the By-Laws and so avoid discussion on questions arising while an election is in progress.

R. B. B.

35[2] Opinion 58. W. W. D. January 1, 1874.

A By-Law requiring all members of a Post, when present, to vote on all questions unless excused, is valid.

Where a vote is taken, and the Post Commander's attention is called to the fact, and the By-Law is not enforced, the vote is invalid, and the election is void.

[Chapter 2.—Article 7.]

The question is referred to me whether the election of an officer by a Post which has in force a rule of order requiring that all members entitled to vote shall vote on all questions (unless excused by a vote of the Post to be taken without debate), is valid, when all the members present do not vote, though none were excused, and attention was called to that fact before the result of the ballot was declared.

The rule of order is not inconsistent with the General Regulations; indeed, it is an exact copy of one of the rules of order of the National Encampment. It is therefore binding upon the Post until it is repealed. If no notice had been called to the fact that some members did not vote, and the vote had been declared, it would have been a matter of inference that the rule had been complied with, but the point was taken at the very time when the rule of order was intended to apply.

The Post Commander should then have enforced the rule. The Posts have by this rule of order limited themselves to a certain prescribed way of expressing their decisions,—viz., by a full vote of all members present. The declaration of a vote by the presiding officer is a declaration in effect that the Post have expressed their will upon the question pending, as this rule prescribes they shall do. But it is admitted in this case that such was not the fact.

I think the vote was invalid, and the election is void. A new election should be held to fill the vacancy as soon as possible under the Regulations.

85[3] Decision 8. L. F.

At an election of officers, new candidates may be voted for at any stage of the ballot, and the fact that the candidate receiving the majority of votes was not nominated until after two ballots had been taken does not render his election void.

At an election there were three nominations for Post Commander. The Post Commander then asked, "Are there any further nominations; if not, I declare nominations closed and we will proceed to ballot."

At the close of the second ballot, no election resulting, two of the candidates withdrew and their friends nominated two new candidates, of whom one withdrew after two more ballots, and the other on the next ballot received a majority of the votes and was declared elected.

No objection was taken at the time, but a comrade subsequently submitted the following questions:

1. Can such nominations of new candidates be made?

2. Has the Commander the right to recognize additional nominations after that order has been passed and balloting is in progress, and in case one of such nominees is elected, would not such an election be irregular and void?

3. Can a Commander change or suspend the regular order of business when objections are made, and without the unanimous consent or vote of the members present?

86* Vacancies in Office.

SECTION 3. Posts may fill any vacancy in their offices at any stated meeting, notice of such contemplated action having been given at a previous meeting (1, 2).

A Post may, by a two-thirds vote, declare vacant the position

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Note 353 continued.

OPINION 8. H. E. T. December 20, 1886.

New candidates can be voted for at any stage of the ballot, and as no nominations are necessary or provided for in the order of business, there was no "suspension of the regular order," and there was, in my opinion, no "irregularity" in the election.

354 DECISION 21. J. P. R.

An excess of ballots renders an election void.

(*a*) Upon a ballot for the election of a Post Commander, two more ballots were cast than there were comrades present. Such ballot was void, and was properly so declared. (*b*) At this election, by invitation of the Post Commander, the Commander of another Post presided. This was irregular, but, in the absence of objection made at the time, did not invalidate the election.

355 DECISION 22. J. P. R.

Nominations for officers.—The rejection of ballots cast for others will not invalidate an election.

By a vote of 71 yeas against 67 nays, a Post ordered that all nominations for officers should be made before any ballots were taken, and that after nominations were closed, ballots cast for officers not previously nominated should not be counted. An opportunity was then given to present the name of any candidate for whom any comrade desired to vote for either of the offices to be filled. No point of order was made, such as to call for a decision from the Post Commander. Two comrades cast their ballots for a comrade not previously named, but their ballots were not counted because of the adoption of the foregoing motion.

Held, that under these circumstances the rejection of the two ballots did not invalidate the election.

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361 OPINION 95. W. C. January 29, 1879.

Post can accept the resignation of its Commander.

Department Commander may issue an order to annul the illegal proceedings of a Post.

Department Commander can overrule decisions of a Post Commander without an appeal having been taken.

[Chapter 2.—Article 7.]

of any officer who has absented himself for four consecutive stated meetings, provided that notice has been duly given the delinquent officer, and notice of the intended action has been given to the members of the Post (3).

Note 36[1] continued.

The Commander of a Post resigns; his resignation is accepted by the Post and notice is given of an election to fill the vacancy at the next regular meeting of the Post, at which meeting the point is taken and sustained by the Chair that a Post cannot accept the resignation of its Commander, but that it must be done by the Department Commander, and no election is held. At the meeting next following, the Senior Vice-Commander of the Department is present, and reads an order from the Department Commander directing him to proceed to the Post at their meeting and to do what he thinks best in the premises, and declaring that the Post is the superior of its Commander. The Senior Vice-Commander orders an election for a new Commander to proceed, which is held under the protest of the Post Commander who had resigned, and a Commander is elected and installed at the meeting. The Post Commander who and resigned appeals from the said order from Department Head-quarters, protests against all the proceedings at the last-mentioned meeting of the Post, and raises the following points:

1. Can an order be issued instructing the Senior Vice-Commander of the Department to amend the proceedings of a Post in his Department, where every order has been obeyed by the Post Commander, except in extreme cases?

2. Is it legal for a Post Commander to decide points of order in a Post meeting as per Rules and Regulations of the Grand Army of the Republic, and can the Department Commander overrule the decisions of the Post Commander without an appeal having been taken in due form?

3. How can a Post Commander carry out his obligations if the comrades of his Post are his superiors?

4. Can an officer superior in rank designate his inferior officer to carry out an order?

The case covers sufficiently the points put for my decision, though it by no means covers all the matters and questions which might arise in the papers referred to. And I shall confine myself strictly to the points raised by the appellant, and my opinion is as follows:

1. That an order can be issued instructing the Senior Vice-Commander, or any other comrade, to cause to be annulled or reverse the proceedings of a Post, *provided* the order comes from a superior authority, and the proceedings to be annulled or reversed are illegal; and the proceedings in this case, as regards the ruling of the Post Commander upon the acceptance of the resignation as set forth in the appeal, in my judgment were illegal.

2. That it is legal for a Post Commander to decide points of order in a Post meeting, and that a Department Commander can overrule the decisions of a

Post without an appeal. (On the latter point see Opinion 76, October 18, 1877, under "First," page 106, 347.)

3. That an opinion upon the third point is not necessary to a solution of the case at hand, and is too general and indefinite for any satisfactory answer, though it may be said that there appears to be nothing inconsistent between the rights of comrades and the duties of Commanders.

4. That the opinion expressed on the first point covers the fourth point raised. None of the points raised seem to present the real point at issue, which is, Can a Post accept the resignation of its Commander? In my opinion it can: the Post Commander receives his office at the hands of his Post comrades; to their hands he returns it. If he is inclined to give it up before the expiration of his term of office, the power to accept a resignation must reside somewhere, in the absence of any rule or regulation on the subject, and following the analogy in all similarly-constituted bodies, it must reside in the body which confers the office to be resigned.

86 DECISION 5. S. S. B.

The resignation of a Post Commander does not operate to make a vacancy until his successor has been elected and actually qualified, consequently it is proper for the officer so resigning to preside at any meeting of his Post until his successor is so elected and qualified.

OPINION 5. C. H. G. November 23, 1885.

At a regular meeting of a Post the Commander tendered his resignation of that office in writing, to take effect, as he stated *verbally*, when his successor was duly elected and qualified. At the same meeting, under the head of "new business," nominations for Commander of said Post were declared in order, and comrades were duly placed in nomination for the office. At the next regular meeting, after the Post was opened, the Post Commander presiding, the Senior Vice-Commander made a formal demand for the Commander's chair, basing this demand upon the fact that the written resignation of the Commander did not specify the time when it would take effect; and having been accepted by the Post, the office of Commander was vacant. The Commander refused to surrender, and the business of the Post was proceeded with. When the Adjutant's report of the proceedings of the previous meeting was read, that portion relating to the resignation of the Commander, declaring that the resignation should take effect upon the election and qualification of his successor, was objected to; whereupon the Commander put the question, "Shall the report of the Adjutant be adopted as read?" which was decided in the affirmative. Afterwards, when the election of Commander was declared to be in order, a comrade protested against the election being held, on the ground that the Commander was not legally in command of the Post. This protest was overruled, and the election was ordered to proceed. No further protest being made, or appeal taken, Comrades M., L., and D. then declined to allow their names to be balloted for, and on motion the Quartermaster was instructed to cast the

ballot or vote of the Post for Comrade W., which he did, and said Comrade W. was then declared to be the duly elected Commander of the said Post.

Objection was made to the vote being cast by the Quartermaster, and Commander D. ordered a vote to be taken by ballot, when Comrade W. received all the votes cast.

The question as to the right of Commander D. to so retain command was submitted to the Department Commander, who, upon investigation, decided that Post Commander D. was legally occupying the chair, but, for reasons stated, set aside the election and ordered an election to be held for Post Commander.

Comrade W. protested against such action, claiming to have been legally elected, and declined to allow his name to be balloted for as a candidate for that office.

An election was held, and Comrade L. receiving a majority of the votes cast, was declared elected as Post Commander.

Thereupon Comrade W. applied for a rehearing, and for an order staying the instalment of Comrade L. as Post Commander until a decision could be had upon his appeal. The Department Commander refused to modify his order, and directed the installation of Comrade L. An appeal was taken to the Commander-in-Chief; but that appeal does not seem to have been perfected. At the Department Encampment, the appeal of Comrade W. was presented, the action of the Department Commander was sustained, and an appeal was thereupon made to National Head-quarters.

First. Article 7, Chapter 2, Section 1, provides that "They shall enter upon their duties at once; and all officers, whether elected or appointed, shall hold office until their successors are installed." In my opinion the resignation of Post Commander D. did not operate to make a vacancy until his successor had been elected and was actually installed.

Second. There was no authority, so far as I could discover, for the confirmation of the report of the committee which recommended the displacement of Comrade W., and the ordering of a new election, for the reason that the election of W. was in all respects legal, valid, and in strict accord with the Rules and Regulations. Hence the calling of a new election, the holding of the same, the turning out of office of Comrade W., and all acts connected therewith, were illegal, revolutionary, and void.

NOTE.—For the *status* of Comrade W. as Post Commander, see Decision 11, S. S. B., 34[8], page 107.

863 DECISION 16. J. P. R.

Suspension of Post Commander, pending trial by court-martial, does not create a vacancy in that office.

The suspension of a Post Commander, pending his trial upon charges and specifications by a court-martial, does not create a vacancy in the office which can be filled by an election. During the suspension, the duties of the office should be performed by the Senior Vice-Commander.

ARTICLE 8.

DUTIES OF POST OFFICERS.

87* Post Commander.

SECTION 1. It shall be the duty of the Post Commander to preside at all meetings of the Post (1–3), to enforce a strict observance of the Rules and Regulations and By-Laws, and all orders from proper authority, to detail all officers and committees not otherwise provided for (3, 4), to approve all orders drawn upon the Quartermaster for appropriations of money made and passed at a stated meeting of the Post, to forward the returns required by Chapter 5, Article 2, and to perform such other duties as his charge may require of him.

87[1] The following extracts are taken from the MANUAL issued under authority of the National Encampment prior to the issue of the BLUE-BOOK.

MISCELLANEOUS.

THE POST COMMANDER.

1. Is a member of the Department Encampment during his term; is expected to attend its meetings and advance generally the interests of the Order, and is responsible for the safe return of Department property in case of disbandment of Post. (*Installation Services.*)

2. Appoints on the night of installation the Adjutant, and, upon the recommendation of the Adjutant and Quartermaster, the Sergeant-Major and Quartermaster-Sergeant, and may remove these officers at his pleasure. (Section 1, Article 7, Chapter 2.)

3. Issues credentials to representatives, forwarding copy to the Assistant Adjutant-General of the Department immediately after the election. (Section 3, Article 2, Chapter 3.) Blanks for this purpose should be furnished by Department Head-quarters.

4. Holds, as Trustee, the bond of the Quartermaster. (Section 5, Article 7, Chapter 5.)

5. May be suspended by the Department Commander when charges are preferred against him. (Opinion 46, March 24, 1873, page 227.)

Can only be tried by court-martial appointed by Department Commander. (Section 3, Article 6, Chapter 5.)

Cannot suspend comrade against whom charges are preferred before conviction. (Opinion 66, July 30, 1875, page 238.)

Has no power to pardon comrades condemned by sentence of Post Court-Martial. (Opinion 64, March 16, 1875, page 232.)

Must forward to Department Head-quarters full proceedings of Post Court-Martial where the sentence is dishonorable discharge, but may confirm or disapprove sentences of lighter degree. (Section 6, Article 6, Chapter 5.)

6. A Post Commander who is also an officer of the Department cannot

choose to vote as such Department officer and be considered absent as Post Commander, so that the Senior Vice-Commander or Junior Vice-Commander may then represent the Post in his stead. (See 497.)

GENERAL INSTRUCTIONS.

The Commander should be familiar with the Rules and Regulations and with common parliamentary law.

The Rules of Order of the National Encampment, with necessary alterations, will answer nearly all practical purposes of a Post.

The Ritual should be memorized thoroughly.

The officers and guard should be drilled in the muster-in services in the intervals of Post meetings until perfect, and each officer should be prepared to act for the next highest officer in his absence.

Errors in the instruction of a recruit should not be *publicly* corrected, unless absolutely necessary. Let any officer in fault be privately notified.

The Commander is responsible for the discipline of the Post when in session or on parade.

He will receive and respond to the proper salutations of members. If his attention be momentarily withdrawn, comrades must wait respectfully, and not call attention by rudely stamping the feet.

The General Orders, Journals, etc., received from Head-quarters are Post property. The General Orders and Circulars must be read to the Post on the meeting next after their receipt, and, with the Journals of National and Department Encampments, be then properly filed and kept accessible to members.

In accordance with military usage, the Post Commander will conduct correspondence with Department Head-quarters, and he is responsible for the returns to Department Head-quarters.—MANUAL.

The Commander *should:*

1. Be neat in person, dress in the proper uniform at Post and Department meetings, wearing the badge only of the office in which he is serving, and require observance of this rule from all officers of the Post.
2. Be punctual in his place at the hour fixed for Post meetings and open the Post *on time.*
3. See that the Adjutant has the Minutes properly written up, and has a memorandum of unfinished business and a list of committees to call on in their order.
4. Give strict attention to business and keep eyes and ears open that no comrade may have cause to complain of inattention.
5. When required to give a decision, decide promptly but not hastily. If in doubt, consult the authorities or invite discussion.
6. Not allow a comrade who has "the floor" to be interrupted improperly. A comrade desiring to ask a question must first ask and receive permission of the Commander and the comrade speaking.
7. Above all things be impartial and courteous. Be polite in speech and insist on that from others.
8. Remember that failure in the performance of a duty will result injuriously to the Post.
9. Permit no light reason to interfere with attendance at Post meetings.

A box should be provided for the safe keeping of the Rituals and Cards. Copies of the Rules and Regulations, of the Manual, and of the Blue-Book should be *always at hand* for reference during Post meetings.

The newly-elected Post Commander should, on assuming the duties of the office, carefully examine the books of the Post and see that all required by the

Rules and Regulations are in use and properly kept, and that a supply of Badges, Leaves of Absence, Transfers and Discharges, forms for Reports and blank requisitions are always on hand.

37[2] Opinion 86. W. C. February 27, 1878.

Post Commander cannot turn over his command to a comrade not a member of the Post. Proceedings under such acting Commander void.

1. Has a Post Commander (except at a regular inspection or installation of its officers) the right to turn over his command to a comrade, as Commander, who is not a member of the Post; and, if not, would the proceedings under any such visiting comrade occupying the chair be valid?

1. For a Post Commander to turn the command of his Post over to a comrade, such as is put in the case, would be clearly in violation of Sections 1 and 2, Article 8, Chapter 2, Rules and Regulations, and the proceedings under such acting Commander would be null and void, and of no effect.

37[3] Opinion 121. W. W. B. March 16, 1880.

When Commander and Vice-Commanders are absent from meeting, the Post elects pro tempore.

When Vice-Commanders are absent, Commander may detail.

The Senior Vice-Commander is temporarily absent from a meeting of the Post, or is occupying the chair of the Post Commander during his temporary absence. How is the vacancy to be filled, the By-Laws of the Post being silent upon the matter?

Chapter 2, Article 8, Section 2, Rules and Regulations, reads as follows:

The Vice-Post Commanders shall perform such duties as are required of them by the Ritual, and, in the absence of the Commander, shall take his place in the order of their rank. If neither of them is present, the Post shall elect a Commander *pro tempore*.

Section 1, Article 8, Chapter 2, provides that "It shall be the duty of the Post Commander . . . to detail all officers and committees not otherwise provided for," etc.

It is my opinion, if the Senior Vice-Commander is absent, it is within the discretion of the Post Commander to detail a comrade to act as Senior Vice-Commander for the time being; or to direct the Junior Vice-Commander, if present, to take the place of the Senior Vice-Commander, and detail a comrade to fill the vacancy thus occasioned. This interpretation, in case of temporary absence, would save all unnecessary trouble.

The Senior Vice-Commander, when acting as Post Commander, has the same power as the Commander to fill vacancies.

37[4] Opinion 33. W. W. D. April 20, 1872.

Detail of Officers and Committees.—Post must pursue the mode provided in the Regulations. Where Regulations are silent Post may provide by By-Law; and where the Post does not choose a mode the power is in the hands of the Post Commander.

[Chapter 2.—Article 8.]

38* Vice-Post Commanders.

SECTION 2. The Vice-Post Commanders shall perform such duties as are required of them by the Ritual, and, in the absence of the Commander, shall take his place in the order of their rank. If neither of them is present, the Post shall elect a Commander *pro tempore* (1).

Note 37[4] continued.

The question is proposed: What is the meaning of the expression "not otherwise provided for," in the clause of Chapter 2, Article 8, Section 1, of the Regulations, which makes it the duty of the Post Commander to detail all officers and committees not otherwise provided for? Does it relate to officers and committees whose appointment is not provided for in the Regulations or by the Post?

The expression, in my opinion, imposes a sort of residuary or alternative power and duty upon the Post Commander. If the Regulations prescribe the mode of selecting a certain officer, neither the Post nor the Commander can pursue a different mode of appointment. If the Regulations are silent, and the Post sees fit to provide by By-Law or by a vote in a particular case, it may do so; but in case of the selection of a committee, or the detail of an officer, when the Regulations are silent as to the method of selection, and the Post does not choose any method, the clause in question places the power and duty in the hands of the Post Commander.

37[5] DECISION 12. L. W.

Post Commander cannot, on his own option, order comrades to attend a funeral.

Can a Post Commander order the Post to attend the funeral of other than a comrade in good standing at his decease?

The power to issue an order for attendance at a funeral, as given in paragraph 1 of Burial Services, must have been first conferred on the Post Commander by Post By-Laws or by resolution of the Post.

The Post Commander cannot, on his own option, direct comrades to leave their business to attend funerals of those who did not, during life, have interest enough in the Order to become members.

There may be cases where such attendance would be proper, but the Commander could learn the wishes of his comrades by calling a special meeting of the Post.

38[1] In the absence of the Post Commander from the Department Encampment, the Senior or Junior Vice-Post Commander may represent the Post. (Paragraph 2, Article 2, Chapter 3.)

The Senior or Junior Vice-Commander, when presiding in the absence of the Post Commander, has the same powers as the Commander (37[3]).

89* Adjutant.

SECTION 3. The Adjutant shall keep in books properly prepared:

1. The Rules and Regulations of the Grand Army of the Republic and the By-Laws of the Post, to be signed by every comrade on his becoming a member.

2. A Descriptive-Book, ruled to embrace every fact contained in the application as well as the date of acceptance and muster, and a column for general remarks.

3. A Journal of the proceedings of the post, after the same shall have been corrected and approved.

4. An Order-Book, in which shall be recorded all orders and circulars issued by the Post Commander.

5. A Letter-Book.

6. An Endorsement- and Memorandum-Book.

7. A Black-Book, in which shall be recorded the names of all rejected candidates; also of all members of the Grand Army who have been dishonorably discharged.

He shall attest by his signature all actions of the Post, and draw all orders on the Quartermaster, to be approved by the

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89[1] The Adjutant may be styled the *right hand* of the Commander. Much of the efficiency of the Post depends on the manner in which his duties are performed. He should be able to refer promptly to the records of preceding action of the Post, to communications and orders received.

The *Journal* should be ruled down the outer margin of each page, leaving one and one-half inches of space to index the headings of each item of business. If this is done for each meeting, it will save a great deal of time when required to refer to any action of the Post.

The Minutes should recite in detail the *action* of the Post.

The name of the proposer of any business should be always given.

The substance of remarks or discussions need not be noted unless specially required.

Lengthy communications or reports need not be entered in full unless so directed, but a brief synopsis of each should be given, and the papers numbered and filed for reference.

Important and lengthy resolutions should be committed to writing by the proposer.

Resolutions accompanying a report should be entered in full.

The General Orders are to be read in place and then filed, unless action thereon is called for. National and Department Orders should be preserved in *Binders* for handy reference and as Post property.

The Adjutant recommends the Sergeant-Major for appointment by the Post Commander. He details the guards under orders of the Post Commander, including Inside and Outside Sentinels.—MANUAL.

Post Commander; shall notify in writing newly-elected members, and shall, under the direction of the Post Commander, prepare all reports and returns required of him. He shall perform such other duties as appertain to his office, and shall transfer to his successor, without delay, all books, papers, and other property.

40* Quartermaster.

SECTION 4. The Quartermaster shall hold the funds, securities, vouchers, and other property of the Post (1), and fill all requisitions drawn by the Adjutant and approved by the Post Commander; he shall collect all moneys due the Post, giving his receipt therefor (2); he shall keep an account with each member, and notify all comrades in arrears; he shall render a monthly account in writing to the Post of its finances, which shall be referred to an auditing committee appointed by the Post. He shall make and deliver to the Post Commander all reports and returns required of Post Quartermasters by Chapter 5, Article 2, and shall deliver to his successor in office, or to any one designated by the Post, all moneys, books, and other property of the Post in his possession or under his control. He shall give

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40[1] See Sections 9–13, page 124, relative to Trustees.

40[2] DECISION 10. L. W.

Post Quartermaster responsible for moneys collected by Quartermaster-Sergeant.

On an appeal from Post No. 35, Department of Massachusetts, I decided that the Department Commander was correct in ruling that the Post Quartermaster was responsible for moneys collected by the Quartermaster-Sergeant.

40[3] The Quartermaster requires a Cash-Book, Ledger, and Receipt-Book.

On the *Cash-Book* should be noted each payment as made, and the entries be read to the Post before adjournment, to allow corrections.

The *Receipt-Book* should also carry forward on the stubs the total receipts.

The *Requisitions* or Orders, duly receipted by the party to whose order they are drawn, are his vouchers for payment, and the total of these deducted from the receipts gives balance of cash on hand.

Some pages of the Cash-Book should be ruled for a summary of Disbursements, giving number of Requisition, date, for whom drawn, for what account, and amount, so as to be always ready for reference.

The Quartermaster recommends the Quartermaster-Sergeant for appointment by the Post Commander.

The Quartermaster-Sergeant should fill out the receipts as payments for dues are made by comrades and entered in the Cash-Book, and after signature by the Quartermaster hand them to the comrades.

security for the faithful discharge of his duties as provided in Chapter 5, Article 7.

41* Surgeon.

SECTION 5. The Surgeon shall discharge such duties in connection with his office as may be required of him.

42 Chaplain.

SECTION 6. The Chaplain shall officiate at the opening of the Post and at the funeral of comrades, when attended by the Post, and perform such other duties in connection with his office as the Post may require.

43* Officer of the Day. Officer of the Guard.

SECTION 7. The Officer of the Day and the Officer of the Guard shall perform such duty as may be required by the Ritual or by the Post Commander.

41* The SURGEON is not now required to make a report on Form F, but such returns are to be made as may be called for by the Medical Director. (See *Returns and Reports.*)

The Post Surgeon should see that the form in reference to disabilities on the back of each APPLICATION is properly filled out.

It will be always of interest, and may be of great service in after-years, to have such a record on file in the Post.

The visitation of sick comrades by the Post Surgeon must be governed by the circumstances of each case. Professional etiquette may prevent his visiting a comrade unless by special request of the attending physician.

He can, however, do a good work in assisting the Relief Committee in the visitation of poor and afflicted comrades.—MANUAL.

43* OFFICER OF THE DAY.

The Officer of the Day will see that the equipments and paraphernalia of the Post are in proper place. He conducts the examination of visitors in the anteroom.

He will have charge of the ballot-box during the election of members, presenting the same to the Post Commander for his announcement of the result.

After placing the ballot-box on the altar, the Officer of the Day will take position two paces to the right of the altar and face the Post Commander.

He instructs the recruit in the unwritten work, which should be carefully memorized and be given clearly and plainly. (See *Instructions in Ritual.*)

The OFFICER OF THE GUARD has charge of the Guard and Sentinels. He directs the admission of members of the Post with the countersign. Visiting comrades and members without the countersign will be reported to the Post Commander for his orders.

No one is to be admitted to the Post without the countersign, unless personally and positively vouched for by a member in the room.

No one should be admitted during the opening or muster-in services. (See *Ritual.*)—MANUAL.

[Chapter 2.—Article 9.]

44 Sergeant-Major. Quartermaster-Sergeant.

SECTION 8. The Sergeant-Major and Quartermaster-Sergeant shall assist the Adjutant and Quartermaster, respectively, in their duties.

45* Trustees.

SECTION 9. Trustees of the Post shall have the care, custody, and management of such property of the Post as the Post by vote shall place in their possession or under their control, subject to the direction of the Post as to its management and investment; and all leases or conveyances of lands or buildings, by or to the Post, shall be in the names of such Trustees and their successors in office.

SECTION 10. Trustees of the Relief Fund shall have the care, custody, and management of the Relief Fund of the Post, subject to the direction of the Post, and all investments of the Relief Fund shall be in the names of such Trustees and their successors in office.

SECTION 11. Posts may make By-Laws regulating the manner in which Trustees of the Post or Relief Fund shall perform their duties, and respecting the Reports of such Trustees.

SECTION 12. No change shall be made by the Trustees in any investment of Post or Relief Funds, or in the title to Post or Relief Fund property, or any money paid therefrom, without the concurrence in writing of all the Trustees.

SECTION 13. The Quartermaster of the Post shall turn over to the Trustees such property and funds of the Post as the Post by vote may direct.

ARTICLE 9.

46 Representatives.

Each Post shall, at the first stated meeting in December, annually elect, from its own members, representatives and an equal number of alternates to the Department Encampment, in the manner prescribed in Chapter 3, Article 2.

See paragraph 3, Article 2, Chapter 3.

45[1] These sections (9–13) were added at the Minneapolis Encampment, 1884.

ARTICLE 10.

47* By-Laws.

Posts may adopt By-Laws for their government, not inconsistent with these Rules and Regulations, or the By-Laws or Orders of the National or Department Encampments, and may provide for the alteration or amendment thereof (1, 2).

47[1] OPINION 101. W. C. March 29, 1879.

Records cannot be altered.

Posts may adopt Rules of Order.

1. A Post adopts a motion: at the next meeting the records of the meeting at which the motion was adopted are read for approval, when a motion is made to alter the record so that it shall appear as if the motion was never adopted. Is such a motion in order?

2. Do the Rules of Order for the National Encampment govern the action of different Post meetings, so far as they appear applicable?

To the first inquiry, I answer, that such a motion would not be in order; the record cannot be changed except to correct an error. To the second inquiry, I answer, they do not; each Post can adopt Rules of Order of its own, not inconsistent with the Rules and Regulations.

See *Rules of Order*.

47[2] DECISION 1. J. S. K. August 27, 1884.

A Post may adopt By-Laws fixing certain nights for the muster of recruits, and having regularly adopted such a By-Law, may refuse to muster a recruit who presents himself for muster upon any other night. (*Note 21*[2], page 75.)

CHAPTER III.

ARTICLE 1.

DEPARTMENTS—ORGANIZATION.

48 Departments.

SECTION 1. Not less than six Posts of the Grand Army of the Republic in any Provisional Department may be organized as a Department by the Commander-in-Chief, upon their application, as provided in Chapter 5, Article 10: *Provided*, That the Commander-in-Chief, when satisfied upon proper representation that a State or Territory has not a sufficient number of soldiers and sailors to organize six Posts, may organize a Department with a less number of Posts.

How governed.

SECTION 2. Each Department shall be governed by a Department Encampment, subordinate to the National Encampment.

ARTICLE 2.

DEPARTMENT ENCAMPMENT.

49* Officers, etc.

The Department Encampment shall consist of:

1. The Department Commander, all Past Department Commanders who have served for a full term of one year, or who, having been elected to fill a vacancy, shall have served to the end of the term, so long as they remain in good standing in their respective Posts (1–6), and the other officers mentioned in

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PAST DEPARTMENT COMMANDERS.

49[1] OPINION 70. W. W. D. December 30, 1875.

National and Department Encampments—Members of, must be in good standing in their Posts.

The question is proposed whether a Past Department Commander, whose connection with the Grand Army of the Republic has been severed by the

Article 4, Section 2, of this chapter (7), and all Past Post Commanders who have served for a full term of one year, or who, having been elected to fill a vacancy, shall have served to the end of their term, so long as they remain in good standing in their respective Posts, in such Departments as have so decided by a two-thirds vote at an annual meeting (8–19), *and Departments at their discretion are authorized to restore honors lost by Past Post Commanders* (16).

Post Commanders.

2. All the Post Commanders for the time being throughout its jurisdiction. In the absence of the Post Commander the Senior or Junior Vice-Commander may represent the Post (7).

Representatives.

3. Members selected by ballot by the several Posts, in such ratio as may be determined on by a two-thirds vote of the members present and voting at any previous Annual Encampment (20). These elected members, and an equal number of alternates, shall be chosen at the time and in the mode of electing officers of Posts, at the first stated meeting in December, and

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Note 49[1] continued.

disorganization of the Department and Post to which he belonged, regains his privileges as such past officer on again becoming a member of his Post in good standing.

The question is upon the construction of the provisions of Section 1, Article 2, Chapter 3, and Section 1, Article 2, Chapter 4, Rules and Regulations.

I think the words "so long as they remain in good standing in their respective Posts" apply to all Past Department Commanders who are not at the time under any disability to act as members of their Post, and that they may sit as members of the Department and National Encampments.

If such officer asks to be admitted to a seat, the question is, Is he in good standing in his Post? If so, he should be admitted.

49[2] OPINION 94. W. C. December 5, 1878.

A Past Department Commander, when he accepts a discharge, loses his position as a Past Department Commander.

Can a Past Department Commander, when he has received an honorable discharge and then has been readmitted to the Order, assume the honors and position due to a Past Department Commander without having served again as a Department Commander?

shall serve during the year, commencing on the first day of January following. Any vacancies that may occur shall be filled in the same manner as provided in Chapter 2, Article 7, Section 3 (21–26).

Credentials. Posts in Arrears.

They shall be furnished with credentials signed by the Post Commander and Post Adjutant, a copy of which shall be forwarded immediately after the election to the Assistant Adjutant-General of the Department. But all Posts in arrears for reports or dues shall be excluded, for the time being, from representation, either by Post Commander or otherwise, in the Department Encampment.

See *Arrearages*, Chapter 5, Article 4.

Basis.

4. The number of representatives to which each Post is entitled shall be determined by the quarterly report last preceding the election.

Note 49[2] continued.

I think not, for the reason that Section 3, Article 4, Chapter 2, Rules and Regulations, would seem to treat such a member, when applying for readmission, as a recruit, making only the exception that *he need not be mustered.** And it is a rule of law that, where exceptions are expressly made, all other matters are expressly excluded save those especially excepted. There is nothing bearing directly upon the question in the Rules and Regulations but the above-mentioned rule, together with the common interpretation of the word "discharge," and a reasonable construction of the section referred to would lead to the view that a member once discharged and again admitted cannot have a record anterior to the date of his last admission.

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* But he must take *anew* the obligation. (See Section 3, Article 4, Chapter 2, page 92.) R. B. B.

49[3] Rule for Reinstatement of a Past Department Commander.

A comrade who held the position of Department Commander, and whose connection with the Order was severed by the disbandment of his Post, can only be reinstated in the honors of that position by the National Encampment, upon application to be made under the Rules prescribed by the Denver Encampment (*Journal*, 1883), page 128,—viz:

No applications shall be hereafter considered unless made in the following form:

1. A request from the Post of which the comrade sought to be restored is now a member, asking for such restoration.
2. A resolution of the Department approving such request.
3. Name of the comrade and of the Post into which he was originally mustered.
4. The date of such muster.
5. The date of election and installation as Department Commander.
6. The cause of leaving the Grand Army of the Republic, whether:
   A. By resignation.
   B. By disbandment of Post or Department. Or,
   C. By what other cause.
7. Date of the organization of the Post of which he is now a member.
8. Date of his muster into said Post.

We deem all of the above information needed to enable this Encampment to judge whether the comrade should be granted the high honor of a restoration to the rank forfeited by cessation of membership with us, and which should never be granted if such cessation was the voluntary act of the comrade.

494 OPINION 87. W. C. March 26, 1878.

A Past Department Commander, though a member of a Post in another Department than that of which he was Commander, is a member of the National Encampment, but not a member of his present Department.

A comrade, formerly a Department Commander, becomes a member in good standing of a Post of a Department other than the one of which he was Commander. Under Article 2, Chapter 3, and Section 1, Article 2, Chapter 4, Rules and Regulations, is he a member of his present Department Encampment and of the National Encampment?

I am of opinion that the comrade is a member of the National Encampment, but not a member of the Department Encampment other than that of the Department of which he was Commander, and then only while a member in good standing of a Post of such Department. The language of Article 2, Chapter 3, is not explicit, but any other construction than the one above given would seem to be a forced construction, and not within the true meaning of the article. While as to membership of the National Encampment the same difficulty does not arise, for in that case Section 1, Article 2, Chapter 4, must mean, from the nature of things, any Past Commander of any Department.

495 DECISION 14. G. S. M.

A Past Provisional Department Commander not entitled to a seat in the Department Encampment.

A comrade claimed a seat in the Department Encampment by reason of being a Past Provisional Department Commander. An adverse decision of the Department Commander was overruled by the Encampment, and the comrade given a seat. From this the Department Commander appealed.

There is no recognition by the Rules and Regulations of "Past" provisional officers, and rightfully, they being created by appointment.

The appeal was sustained.

49[6] For standing of Past Department Commanders whose Posts stand suspended, see 96[1], page 170. R. B. B.

49[7] Opinion 127. G. B. S. December 17, 1881.

A comrade holding official positions in a Department and in a Post, can only act in one position in the Encampment.

A comrade holding an appointment as Judge-Advocate of a Department is elected Commander of his Post. Can he be present at an Encampment of the Department as Judge-Advocate, and yet be considered absent as Post Commander, so that the Post can be represented by the Senior Vice-Commander or the Junior Vice-Commander?

The language of the amendment adopted at Indianapolis (page 799, *Journal*, 1881) is plain, and its purpose well understood.

The comrade can elect to hold both positions, but upon the roll-call he can vote but once.

If he is present and voting as Judge-Advocate, he cannot be "considered" absent in order to add one vote by proxy. The Post could have taken care of its own representation by electing another comrade Commander, or the comrade elected could have resigned in time to fill the vacancy.

I am clearly of the opinion that the language of the amendment admits of a literal construction, and that no comrade can be represented by proxy who is present in the Encampment.

PAST POST COMMANDERS.

49[8] Provision for the admission of Past Post Commanders by a Department Encampment was made by the National Encampment at Providence, 1877.

49[9] Opinion 111. W. W. B. January 17, 1880.

Past Commanders, transferred from another Department, not entitled to a seat.

Is a comrade who has joined a Post of this Department by transfer, having previously served as Commander of a Post in another Department, entitled thereby to a seat and vote in this Department?

He is not.

49[10] Opinion 112. W. W. B. January 17, 1880.

Can a Post Commander of a Post in this Department, who has been transferred by this Post, and who is now a member in good standing of a Post in an adjoining Department, be admitted to a seat and vote in the Encampment of this Department?

He cannot.

49[11] DECISION 6. J. P. R.

A Past Post Commander, on transfer to another Department, not entitled to a seat in the Encampment of that Department.

A Past Post Commander, joining a Post of another Department by transfer, is not entitled to a seat in the Encampment of that Department by virtue of his past rank.

OPINION 6. W. G. V. March, 1888.

The question submitted by the Commander of the Department of Arizona is this: Was a comrade—a Past Post Commander in the Department of California—who took a transfer from his Post in that Department and joined a Post in the Department of Arizona, entitled to a seat and to a vote as a Past Post Commander, in a meeting of the Department Encampment of Arizona, ordered for the permanent organization of the Department, he having become a member of a Post in Arizona after the order was issued creating the Department of Arizona out of the Posts in that Territory?

This question is settled in the negative by Opinion 87, March 26, 1878, page 129, BLUE-BOOK, and Opinion 111, January 17, 1880, page 130, BLUE-BOOK. Those Opinions gave construction on this point to Article 2, Chapter 3, of the Rules and Regulations, and have been approved by the National Encampment.

49[12] DECISION 14. J. P. R.

Past Post Commanders on transfer to another Department.

In case a Post is transferred from one Department to another, Past Commanders of such Posts are not entitled to membership in the Encampment of the Department to which the transfer is made merely because such membership was accorded by the Department to which it formerly belonged. The right to determine whether Past Post Commanders shall be members of a Department Encampment rests solely with such Encampment.

49[13] DECISION 2. J. S. K.

1. A Post Commander, whose Post was disbanded in 1874, and who did not join another Post until 1883, lost all honors and privileges acquired by having been Post Commander, and was not, upon again joining the Order, entitled to a seat in the Department Encampment by reason of his being a Past Post Commander of such defunct Post.

2. The illegal admission of these comrades did not per se *render illegal the proceedings of such Encampment.*

Prior to the year 1874, Comrades L. F. and M. A. B. had served as Commanders of Post No. 1, New Mexico, and Comrade E. S. had served as Commander of Post No. 2. During 1874 both of these Posts disbanded, and were never revived. These comrades did not join any other Post until they were mustered into Post No. 39, Department of Colorado (now New Mexico), in the

year 1883. Upon this record these comrades claimed the right, as Past Post Commanders, to seats in the Department Encampment of New Mexico. This privilege was accorded to them by the Department Encampment, at its annual session held February 24, 1883. From this action an appeal was taken.

Opinion 2. D. R. A. October 4, 1884.

The only question to be determined in this case is whether these comrades, by reason of the disbanding of their Posts, and of their remaining for so many years—to wit, from 1874 to 1883—without uniting with any other Post, were deprived of the privileges they acquired as Past Post Commanders of such defunct Posts.

When the Posts to which these comrades belonged ceased to exist, they stood as members of disbanded Posts, and upon proper application were entitled to receive transfer cards, which would have entitled them to join another Post within a year. Failing to do this, as required by the Rules and Regulations, they became honorably discharged from the Order. (Section 2, Article 4, Chapter 2, Rules and Regulations.)

By such discharge they lost all rights and privileges acquired by reason of official position during previous membership, and they could not be restored by again joining the Order.

Decision 4. Decisions and Opinions, Commander-in-Chief and Judge-Advocate-General (49[16], page 133).

Opinion 94. Decisions and Opinions, Commander-in-Chief and Judge-Advocate-General (49[2], page 127).

The admission, therefore, of these comrades was illegal. But this action did not *per se* render illegal the proceedings of the Encampment in which they participated.

49[14] Decision 18. S. S. B.

Past Post Commanders, honorably discharged from the Grand Army of the Republic, not entitled to the honors and privileges of Past Post Commanders.

A Past Post Commander applied for and received an honorable discharge from the Grand Army of the Republic. He subsequently re-entered the Grand Army of the Republic in another Post and claimed the right to sit in the Department Encampment as Past Post Commander of the Post from which he received his discharge.

Opinion 18. C. H. G. June 18, 1886.

A Past Post Commander in good standing asked for and was granted and took a discharge from the Grand Army of the Republic, thus severing his connection with the organization. Some nine or ten months subsequent to his discharge he joined another Post as a charter member and recruit. Afterwards he appeared at the Department Encampment and claimed a seat as a Past Post Commander of the first Post. His claim was upheld by the Encampment, and an appeal was taken to the National Encampment.

I am of the opinion that the action of the Department was erroneous. Whatever may have been the intention of Comrade W., the thing he did was

to disconnect himself wholly from the Grand Army of the Republic. He received an honorable discharge, and for every purpose ceased to be a member of the Grand Army of the Republic from that date; could not have entered its meetings, was not entitled to the countersigns, and had ceased to have any connection whatever therewith.

I refer to Opinion 94, December 5, 1878 (49[2], page 127).

I think the action of the Department was erroneous and should be reversed.

49[15] OPINION 93. W. C. December 4, 1878.

Past Post Commander does not lose his standing by joining another Post.

Does a Past Post Commander, by joining a Post other than the one in which he was a Commander, or by becoming a charter member in a new Post, though both the old and the new Posts may afterwards surrender their charters, lose his standing as a Past Post Commander?

I think not, for the reason that, having been elected and having served as a Post Commander, he has, by so doing, gained a right to certain honors and positions under the Rules and Regulations, of which he cannot be deprived except by a change in the Rules and Regulations, while he is a member in good standing of any Post.

49[16] DECISION 4. L. W.

*A Past Post Commander who has been "dropped" is not entitled to the honors of that position unless again elected Post Commander.**

Is a Past Post Commander who has, after service as such, been dropped from the rolls and then rejoins as a recruit, entitled to the honors of that position unless again elected as Post Commander?

The comrade has no claim to any honors earned, or resulting from such honors, previous to the time when he was dropped. Having again become a member, he stands upon the footing of a new member.

* Authority for the restoration of Past Post Commanders "dropped from the rolls" was conferred by the National Encampment at Columbus, 1888, by the amendment in italics in Section 1. No rules were prescribed by the National Encampment for such reinstatement, and the method will rest entirely with the Department Encampment.

49[17] OPINION 106. W. W. B. December 17, 1879.

Past Commanders, or officers who serve for the period of their election, entitled to the honors.

Are past officers who have served three months—the last three months of the year—entitled to past honors, and to be Past Commanders?

Past officers who were elected to fill a vacancy, and served to the end of the term, are entitled to all the honors of a full term. So long as they remain in good standing in their respective Posts, they are entitled to the honors of their grade, as past officers.

49[18] DECISION 9. L. T.

A Post Commander whose Post was disbanded, and who did not join another Post till several years after, is not entitled to any honors by virtue of his service in the former Post.

A comrade who was Commander of a Post in 1867, lost his membership when the Post surrendered its charter several years ago. He is at present a member of a Post recently organized in the same place. Can he be borne on the rolls as a Past Commander?

OPINION 9. H. E. T. December 20, 1886.

A past officer who had ceased to be a member of the Order by honorable discharge, or by disbanding of his Post, is not entitled to his past honors on again becoming a member of the Order. (See Opinion 94, December 5, 1878, 49[2], page 127.)

49[19] DECISION 10. L. F.

The Senior Past Post Commander in a Post is the one who, having never lost his honors, earliest held the office of Post Commander, whether in his present or in another Post.

The following question submitted by a comrade was referred to me by the Commander-in-Chief:

In a certain Post are four comrades designated as A., B., C., and D.

In 1870, A. was Commander of a Post in another Department.

In 1875, B. was Commander of a Post in another Department.

In 1880, C. was Commander of a Post in the same Department, but not the one where he now belongs.

In 1882, D. was Commander of the Post to which all now belong.

Neither comrade has lost his honors by suspension or discharge.

Who is the Senior Past Post Commander in said Post?

OPINION 10. H. E. T. December 20, 1886.

The Senior Past Post Commander is the one who earliest held that office, whether in the Post where he is now a member or in another Post.

49[20] REPRESENTATION.—By amendment to this paragraph made by the National Encampment at Baltimore, 1882 (*Journal*, page 887), each Department Encampment will fix the ratio of representation for succeeding Encampments, or until duly changed. At that time the ratio was as follows:

3. Members selected by ballot by the several Posts in the ratio of one for every fifty members in good standing, and of one additional member for a final fraction of more than half that number in Departments having three thousand members or more; but in those Departments having a membership of less than three thousand the ratio shall be one representative for every

twenty-five members in good standing, and one additional representative for a final fraction of more than half that number. But each Post, whatever its number, shall be entitled to choose at least one member. R. B. B.

49[21] OPINION 83. W. C. February 18, 1878.

Where a Post entitled to only two representatives sends more, the Encampment may exclude the extra representative.

Two Posts, with three representatives each, claim representation in a Department Encampment against the ruling and under the protest of the Department Commander presiding; the Encampment excludes one representative from each of the Posts, and the question is raised, Was such action legal on the part of the Encampment? The last return *preceding the convening* of the Encampment showing these Posts to be entitled to three representatives each, the question comes up on a request to declare the proceedings of the Encampment void.

It appears upon all the facts, and after a hearing of all parties, that at the time of electing representatives—to wit, "the first stated meeting in December"—the Posts in question had a membership which entitled them to have two representatives each. I am of the opinion that the action of the Encampment restricting these Posts to two representatives each was valid.

49[22] OPINION 82. W. C. January 30, 1878.

No change in the membership subsequent to the time of the election can affect the number of representatives.

A Post at "the first stated meeting in December" elects the number of Department representatives to which it is then entitled by its then membership; the return for the quarter ending December 31 shows such a falling off in membership as not to entitle the Post to the number of representatives elected, if the December return controls. The Department Encampment meets in January. On what basis shall its roll be made up?

Article 2, Chapter 3, Rules and Regulations, prescribes the basis of representation in Posts in the Department Encampment.

Section 2, Article 2, Chapter 4, prescribes the time when such representatives shall be elected, who hold office for the calendar year next ensuing such election. And the case put is, Will any change in membership, subsequent to the time of such election, affect the number of representatives or delegates already elected? I think not; for the reason, among other things, that any other view would lead to instability, uncertainty, and fluctuations in the constitution of the Department Encampment, which is a body almost wholly elected in December to serve for a period of twelve months, like most of our State Legislatures. Supposing the other view to prevail, and there were several sessions of the Encampment held during the year, if at each session the basis of representation was determined by the then number of members of the Post, cases would not infrequently arise where a Post would be entitled to a different number of representatives at different sessions of the same Encampment. It might be a

less number of representatives than had been elected; in which case, which representatives are to serve and which are to be dropped? Or it might be a larger number of delegates than had been elected; in which case, where is the provision for the time and manner of electing the additional representatives? This would seem to be conclusive and such a construction would seem unreasonable. Therefore I am of opinion as above stated,—to wit, that membership at the time of electing representatives should determine the number of representatives to which a Post is entitled. As this ruling might make it inconvenient to the officers of the Encampment to determine the exact membership at the time of the election (for I don't think any preceding return should govern), in my judgment the Rules and Regulations should be so amended as to provide that the return of Post membership next preceding the election of Encampment representatives should be the basis upon which to determine the representation.*

* Paragraph *fourth* was added as recommended. The basis of representation in the Department Encampment is on the number of members in good standing reported September 30. R. B. B.

49[23] OPINION 109. W. W. B. January 12, 1880.

Can be no proxies.

Can members of the Department Encampment be represented in the sessions of that body by proxy? And if proxies are allowed, can a comrade, already a member of the Encampment, hold a proxy or proxies, and, in that capacity, cast his own and one or more proxy votes?

The Rules and Regulations provide that the Department Encampment shall consist of the officers named and referred to in Article 2, Chapter 3, and the number of members or alternates therein designated, selected by ballots of the several Posts. No other persons can act as members of a Department Encampment.

By Article 8, Chapter 3, "Each member present at a meeting of the Department Encampment shall be entitled to one vote;" and since provision is made for alternates, and vacancies may be filled in the manner provided in Chapter 2, Article 7, Section 3, it is considered that only those members or their alternates, duly elected, who are present, have a right to a vote at a meeting of the Department Encampment.

49[24] OPINION 96. W. C. January 20, 1879.

Post organized after the third quarter entitled to representation in the Department Encampment.

Is a Post, organized and in working order after the third quarter of the year and before the annual meeting of the Department Encampment, entitled to representation in the Encampment?

Every Post is entitled to representation in the Department Encampment, if not in arrears. In the case put, the Post cannot be in arrears for reports, for none are due from it until the first quarter; and, if not in arrears for dues, and if it has elected representatives at the proper time, the representatives should be admitted.

ARTICLE 3.

MEETINGS.

50* Annual Meeting.

SECTION 1. There shall be an annual meeting of each Department Encampment between January first and May first of each

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49[25] DECISION 15. L. F.

A meeting for organization was the first regular meeting of the Post, as the term is used in Article 9, Chapter 2, and a representative so elected should be given his seat.

A Post is organized December 16. At that meeting officers and a representative to the Department Encampment are elected; no other meeting is held in December.

Can the meeting, so held, be construed as the first regular meeting of the Post in the sense of Article 9, Chapter 2, Rules and Regulations?

OPINION 15. H. E. T. February 7, 1887.

I am of opinion that the meeting may be so considered, and that the representative so elected should be given his seat in the Department Encampment.

49[26] DECISION 10. R. A. A.

A Post regularly mustered previous to the annual meeting of the Department Encampment is entitled to representation therein.

Can a Post which is mustered after the first of January, and before the meeting of the Department Encampment, take part in the same?

OPINION 10. D. R. A. 1890.

Yes, by its Post Commander, or in his absence by the Senior or Junior Vice-Commander, but not by an elected delegate or delegates. The basis for elected representatives is fixed by Section 4, Article 2, of the Rules and Regulations, which provides as follows:

4. The number of representatives to which each Post is entitled shall be determined by the quarterly report last preceding the election.*

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* Based on return for September 30. Under this section the election can only be held in December, except in cases of vacancy, as provided by Chapter 2, Article 9, Rules and Regulations.

POWER OVER THE SESSIONS OF AN ENCAMPMENT.

50[1] DECISION 17. R. A. A.

1. An Encampment, after having convened in regular session, alone has control over the time, place, and duration of its sessions.

year, and a semi-annual meeting, if so determined at the annual meeting of the Department, or by the Council of Administration (1–4).

Special Meetings.

SECTION 2. Special meetings may be convened by order of the Commander, by and with the advice and consent of the Council of Administration, provided that no business except that specified in the order for such special meeting shall be transacted thereat; and no alterations affecting the general interests of the Department shall be made at a special meeting.

Note 50[1] continued.

2. The Encampment having adjourned to meet at a certain time and place, the Commander has no power to change the time and place for such meeting.

3. The representatives present at a meeting of the Encampment constitute a quorum for the transaction of business.

At the Seventh Annual Encampment of the Department of Louisiana and Mississippi, which convened February 10, 1890, after some preliminary work the Encampment, on motion, adjourned to meet at the hall of Joseph A. Mower Post at 7.30 o'clock the next evening.

After this adjournment the Department Commander issued a call for a meeting of the Encampment at the same hour in another place. Two meetings were therefore held, each claiming to be the Department Encampment, and each elected Department officers and representatives to the National Encampment.

Judge-Advocate-General Austin, to whom all the papers were referred, held, and the Commander-in-Chief ruled, as stated in the syllabus above.

The full statement of the case is given in pages 57–60, *Journal*, National Encampment, 1890.

50[2] DECISION 6. J. S. K. December 17, 1884.

In the absence of any action by the Department Encampment, fixing the time and place for holding its annual meeting, the power to fix the time and place therefor devolves upon the Council of Administration.

In whom lies the authority to name the time and place for the annual meeting of the Department Encampment, the Department Commander or the Council of Administration?

There is no specific provision in the Rules and Regulations on this subject, but the following provisions are applicable:

There shall be an annual meeting of each Department Encampment between January first and May first of each year, and a semi-annual meeting, if so determined at the annual meeting of the Department, or by the Council of Administration. (Chapter 3, Article 3, Section 1.)

The Council of Administration shall have charge of the working interests of the Department. (Chapter 3, Article 6, Section 9.)

A proper construction of these provisions leads to the conclusion, that in the absence of any action by the Department Encampment, fixing the time and place for holding its annual meeting, the power to fix the time and place therefor devolves upon the Council of Administration.

503 DECISION 6. R. A. A.

It is lawful for a special meeting of the Encampment, regularly convened, under Section 2, Article 3, Chapter 3, Rules and Regulations, to change the time and place for the Annual Encampment, notwithstanding the Annual Encampment in regular session may have fixed the time and place.

At the annual meeting of a Department Encampment, held in February, the time and place for holding the next Annual Encampment was fixed. On the 28th of October following, the Department Commander, with the advice and consent of the Council of Administration, called a special meeting of the Encampment to consider the advisability of changing the time and place of holding the Annual Encampment, and a change was made at such special meeting.

Can a special meeting reverse the action of the previous Annual Encampment, and change the time and place, so already fixed for holding the next Annual Encampment, to another time and place?

OPINION 6. D. R. A. 1890.

It is claimed that the time and place for holding the next Annual Encampment having been fixed by the preceding one, such time and place cannot be changed at a special meeting of the Encampment, regularly convened for that purpose, for the reason that such change would be an "alteration affecting the general interests of the Department," and therefore inhibited by Section 2, Article 3, Chapter 3, Rules and Regulations. The Rules and Regulations require that each Department shall hold an annual meeting between January 1 and May 1 of each year, but they do not prescribe any fixed time between these dates, or designate the manner by which the selection of the time or place for holding such meeting shall be made. The Annual Encampment may fix the time and place, or it may leave it to the Council of Administration. There seems to be no uniformity of action on this subject by the different Departments. So many contingencies may arise that would make it desirable to change both the time and place, after they had been fixed by an Annual Encampment, that it would be unwise to make an unalterable rule upon the subject. For such reason, no doubt, the rule was purposely framed to give as much latitude as possible, and the clause prohibiting "alterations affecting the general interests of the Department" does not apply to making

a change of the time and place for holding an Annual Encampment. I am therefore of opinion that, notwithstanding the time and place may have been fixed by one Annual Encampment for the holding of the next, it is lawful for a special meeting of the Encampment, regularly convened under Section 2, Article 3, Chapter 3, Rules and Regulations, to change the time and place of holding such Annual Encampment.

504 DECISION 19. J. P. R.

Meetings of Department Encampment.

The Commander-in-Chief has no power to authorize the holding of a Department Encampment after the time fixed by the Rules and Regulations.

505 DECISION 24. R. A. A.

When a record is made and approved by the Department Encampment it is a finality.

An appeal was taken from the action of a Department Commander in changing certain words in the printed proceedings of the Annual Encampment of the Department. The full statement of the case will be found in pages 66–68, *Journal*, 1890. The Judge-Advocate-General, in his statement of the case to the Commander-in-Chief, reported that "the Department Commander only corrected errors that had been made in the printing of such proceedings. This he did by pasting 'errata' slips in the volume before it was distributed. This would seem to be both a proper and effective method of correcting such errors.

"I am of the opinion that the Council of Administration, as the executive body of the Department, had authority to direct the Department Commander to correct such errors, and that the Commander, in adopting the method he did to carry out such directions, acted within the scope of his authority.

"This appeal should therefore be dismissed."

The Commander-in-Chief ruled that where errors occur in the printed proceedings of an Encampment, the Council of Administration have authority to direct the Department Commander to correct such errors. This was based upon the case stated above and the Opinion thereon of the Judge-Advocate-General.

The Committee on the Report of the Judge-Advocate-General differed from these conclusions, and reported, "As to Opinion 24, your committee believe that when a record is made and approved by the Department Encampment it is a finality, and, if published, must be an exact transcript of the original record, and that neither incoming nor outgoing officers and Councils of Administration have any authority to make any change in said record."

The report of the committee was adopted by the National Encampment.

ARTICLE 4.

DEPARTMENT OFFICERS.

51* Eligibility to Office.

SECTION 1. All members of the Grand Army of the Republic in good standing shall be eligible to any office in their Department (1–3).

51[1] OPINION 128. G. B. S. December 24, 1881.

One who resides outside the limits of his own Department is eligible to office therein.

Is a comrade who resides outside of the territorial limits of his own Department eligible to office?

So long as he remains in good standing in his Department there can be no doubt of his eligibility to office. There is nothing in the Rules and Regulations requiring a comrade to reside within his Department.

51[2] OPINION 81. W. C. January 29, 1878.

Office—All members eligible to.

A Department Encampment voted that the Department Commander, Senior Vice-Department Commander, and Junior Vice-Department Commander, shall be ineligible to re-election to these offices until they shall have served at least one term out of office. Is such vote valid?

The section referred to says in the plainest terms that "*All members* of the Grand Army of the Republic in good standing shall be *eligible* to *any* office in their Department," and the vote referred to is, in my opinion, clearly in violation of this section, and therefore is invalid, void, and of no effect.

51[3] OPINION 107. W. W. B. January 6, 1880.

Department officer may also be an officer of his own Post.

Does the election of a comrade to a Department office remove him from the jurisdiction of the Commander of the Post of which he is a member?

Can a Post Commander, in a special order convening a Post court-martial, appoint as a member of the court a member of the Post who is Junior Vice-Commander of the Department?

When a Department officer is on duty as a Department officer, he is not subject to the orders of the Commander of the Post, but he is entitled to the rights and privileges of a member of his Post, if he sees fit to avail himself of them. He must pay his dues, and he may at the same time be an officer of the Post, and when acting as a member or officer of the Post he is under the jurisdiction of the Post Commander.

The Post Commander, by virtue of his office, is a member of the Department Encampment, and may himself be a Department officer.

[Chapter 3.—Article 5.]

52* Officers.

SECTION 2. The officers of each Department shall be a Commander, a Senior Vice-Commander, a Junior Vice-Commander, an Assistant Adjutant-General, an Assistant Quartermaster-General, an Inspector, a Judge-Advocate, a Chief Mustering Officer, a Medical Director, a Chaplain, and a Council of Administration, consisting of the above-named officers and five members by election (1).

ARTICLE 5.

ELECTION OF DEPARTMENT OFFICERS.

53 Officers elected.

SECTION 1. These officers, except the Assistant Adjutant-General, the Assistant Quartermaster-General, the Inspector, the Judge-Advocate, and the Chief Mustering Officer, shall be chosen at the annual meeting of the Department Encampment in each year, by ballot, in the manner prescribed for the election by ballot of officers of Posts in Chapter 2, Article 7, of these Regulations.

54* Installation.

SECTION 2. The officers thus elected shall enter upon their respective duties immediately after the adjournment of the meet-

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52[1] DECISION 3. J. S. K. October 4, 1884.

There is no provision in the Rules and Regulations authorizing a member of the Council of Administration of a Department to delegate his official powers to another by proxy.

At a meeting of a Department Council of Administration it was reported that "a majority of the members were present in person or *by proxy*."

The resignations of two members of the Council were accepted, which vacancies were then filled by an election.

There is no provision in the Rules and Regulations authorizing a member of the Council of Administration of a Department to delegate any of his official powers to another by proxy. It follows then, from the foregoing statement of facts, that there was not a legal quorum of the Council present at this meeting, and therefore all action had at such meeting was illegal and void.

54[1] OPINION 9. W. W. D. September 15, 1871.

1. Department officers hold their offices until their successors are installed.

2. Commander-in-Chief may take jurisdiction of a Department.

ing at which they were chosen, and shall hold office until their successors are duly installed (1, 2).

55* Vacancies.

SECTION 3. All vacancies in elective offices may be filled by the Council of Administration (1).

Note 54[1] continued.

If a Department organization neglects to hold annual Encampments for electing officers, can they hold their offices indefinitely?

Can the Commander-in-Chief order the Department Commander to call an Encampment, and name the time and place, when the Department Commander has failed to do so?

I say, decidedly, yes to both questions: to the first, because the Regulations prescribe that the officers shall hold their positions until their successors are installed; to the second, because it is the duty of the Commander-in-Chief to issue all orders required to enforce the Rules and Regulations.

2. If a Department Commander fails to perform a duty prescribed by the Regulations, the Commander-in-Chief should order him to do it; and when the matter of calling a meeting is in his hands, by virtue of the neglect of the Department Commander, he may take jurisdiction of the whole matter, and may fix the time and place in his order to the Department Commander.

54[2] OPINION 90. W. C. August 2, 1878.

Officer must be installed before he can act.

Can a Department officer be considered, and act as such, without being regularly installed?

In my opinion he cannot; the old incumbent does not retire, and there is no vacancy until the officer is duly installed. (See Section 2, Article 5, Chapter 3, Rules and Regulations. See *Note 34*[3], page 105.)

55[1] DECISION 15. G. S. M.

Department Commander—Office of, cannot be declared vacant by reason of absence from the Department; is entitled to the honors of the office, though absent from the Department.

1. Has the Department Encampment or Senior Vice-Commander the right to declare vacant the office of Department Commander in consequence of his absence from the United States during the greater part of the year?

2. Is such Department Commander entitled to the honors of the position?

The first question was answered negatively; the second in the affirmative.

Article 6.

56 Department Commander.

Section 1. The Department Commander shall, immediately after entering upon his office, appoint an Assistant Adjutant-General, an Assistant Quartermaster-General, an Inspector, a Judge-Advocate, and a Chief Mustering Officer, and may remove these officers at his pleasure. He may appoint as many Assistant Inspectors, on the nomination of the Inspector of the Department, and as many Aides-de-Camp as he may deem necessary. He shall preside at all meetings of the Department Encampment and Council of Administration, shall forward the reports and dues to National Head-quarters, and see that all orders received from thence are properly published and obeyed; shall issue suitable charters to all Posts organized in his Department, and perform such other duties as are incumbent on officers of like position.

57 Vice-Department Commanders.

Section 2. The Vice-Commanders shall assist the Commander, by counsel or otherwise, and in his absence or disability they shall fill his office according to seniority.

58 Assistant Adjutant-General.

Section 3. The Assistant Adjutant-General shall keep correct records of the proceedings of the Department Encampment and of the Council of Administration; he shall conduct the correspondence and issue all orders under direction of the Commander, draw all requisitions upon the Assistant Quartermaster-General, make out all returns to National Head-quarters and transmit the same, through the Department Commander, to the Adjutant-General, countersign all charters issued by the Commander, keep an Order-Book, a Letter-Book, an Endorsement- and Memorandum-Book, and files of all orders, reports, and correspondence received and remaining in his office, and perform such other duties and keep such other records in connection with his office as may be required of him by the Commander or the Department Encampment. He shall receive as compensation for his services such sum as the Department Encampment may from time to time determine.

59 Assistant Quartermaster-General.

SECTION 4. The Assistant Quartermaster-General shall hold the funds, securities, vouchers, and property of the Department, and fill all requisitions drawn by the Assistant Adjutant-General and approved by the Commander, and shall give good and sufficient security, to be approved by the Council of Administration, for the faithful discharge of his duties.

60 Inspector.

SECTION 5. The Inspector shall perform such duties as are prescribed in Chapter 5, Article 5, and shall receive such compensation for his services as the Department Encampment shall from time to time determine.

61* Judge-Advocate—Chief Mustering Officer.

SECTION 6. The Judge-Advocate and the Chief Mustering Officer shall perform the duties properly belonging to their offices (1).

62* Medical Director.

SECTION 7. The Medical Director shall require such returns from Post Surgeons as may be needed and called for by the Surgeon-General, and shall make returns to that officer (1).

63 Chaplain.

SECTION 8. The Chaplain shall perform such duties in connection with his office as the Commander or the Department Encampment may require of him.

64* Council of Administration.

SECTION 9. The Council of Administration shall have charge of the working interests of the Department, shall audit the ac-

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61[1] The Judge-Advocate is only to pass upon questions submitted to him by the Department Commander. (See *Note 66*[1], page 146.)

62[1] The Medical Director now requires from Posts only such reports as may be called for by the Surgeon-General.

64[1] The Council of Administration cannot legalize an illegal act. (See *Note 17*[2], page 65.)

The Council fills vacancies in elective offices of the Department. (Section 3, Article 5, Chapter 3.)

The Council approves the bond of the Assistant Quartermaster-General. (Section 4, Article 6, Chapter 3.)

counts of the various officers, shall keep a full and detailed record of its proceedings, and shall present the same for the consideration of the Department Encampment at each stated meeting thereof (1, 2).

65 Reports.

SECTION 10. The various staff officers shall make to the Department Encampment, at each stated meeting, full and complete reports, in writing, of the operations of their Departments, and when retiring from office shall deliver to their successors all moneys, books, and other property of the Department in their possession or under their control.

ARTICLE 7.

66* Appeals.

All members shall have the right of appeal, through the proper channels, from the acts of Posts or Post Commanders and Department Commanders or Encampments to the next highest authority, and to the Commander-in-Chief, whose decisions shall be final, unless reversed by the National Encampment; but all decisions appealed from shall have full force and effect until reversed by competent authority (1–6).

64[2] There can be no representation by proxy in the Council. (See *Note 52*[1], page 142.)

66[1] OPINION 56. W. W. D.

The right of appeal from acts of Post Commanders is given by Chapter 3, Article 7, Rules and Regulations. Such appeals are, I think, intended for the protection of members who are aggrieved by the acts from which appeal is taken. The course of appeal is from the decision of the Post Commander to the Post, thence to the Department Commander, thence to the Department Encampment or Council of Administration, if either is in session, and afterwards, or if they are not in session, directly to the Commander-in-Chief, and from him to the National Encampment or Council of Administration.

At each stage the question is to be decided by the officer receiving the same, and each decision will stand as the *law* until reversed by competent authority.

When an appeal is taken from the action of a Post Commander, it must be first submitted to the Post. An appeal may then be taken from the action of the Post to the Department Commander, to be forwarded by the Post Commander to the Assistant Adjutant-General.

NOTE.—Questions requiring official decisions are not to be referred directly by comrades or Post officers to the Judge-Advocate of the Department or to the Judge-Advocate-General.

The reference of any question to the Judge-Advocate is a matter for the discretion of the Department Commander, the Judge-Advocate acting simply as the legal adviser of the Department Commander on questions so referred.

R. B. B.

66[2] DECISION 20. S. S. B.

A Department Encampment not being in session, an appeal from the original act of the Department Commander, or Department Council of Administration, may be made direct to the Commander-in-Chief.

OPINION 20. C. H. G. July 19, 1886.

Two Posts of a Department issued a circular criticising the action of the Department Commander, . . . advising the Posts of the Department to withhold the payment of the *per capita* tax, . . . and suggesting that the Posts of the Department severally protest against the action referred to. The Department Commander suspended the said Posts, and from this action they appealed.

The first question presented in this case is whether or not an appeal from a suspended Post, under the circumstances in this case, will lie to the Commander-in-Chief direct, without first going to the Department Encampment. It is a question that is not without some doubt, and I have resorted to the analogies and reason of the case rather than to a literal construction of the article itself.

Chapter 3, Article 7, of the Rules and Regulations contains the law, so far as it is written: "All members shall have the right of appeal, through the proper channels, from the acts of Posts or Post Commanders and Department Commanders or Encampments to the next highest authority, and to the Commander-in-Chief, whose decisions shall be final, unless reversed by the National Encampment; but all decisions," etc.

In this case the Department Commander suspended two Posts, and they made their appeal directly to the Commander-in-Chief. Should they have appealed directly to the Department Encampment?

Past Commander-in-Chief Beath, in the revised edition of his BLUE-BOOK, page 146, quotes: "The right of appeal from acts of Post Commanders is given by Chapter 3, Article 7, Rules and Regulations. Such appeals are, I think, intended for the protection of members who are aggrieved by the acts from which appeal is taken. The course of appeal is from the decision of the Post Commander to the Post, thence to the Department Commander, thence to the Department Encampment or Council of Administration, if either is in session, and afterwards, or if they are not in session, directly to the Commander-in-Chief, and from him to the National Encampment or Council of Administration." The right of appeal from original acts of a Department Commander or Department Encampment is nowhere given in express terms in the Regulations, but has been invariably claimed and allowed as a consequence of the relative subordination existing between the various officers and organizations of the Order.

[Chapter 3.—Article 7.]

I think this construction of the article is the true one. The object of an appeal is to have the final judgment of the highest authority known to the Order before any right of a member of a Post is finally taken away, and if there can be no appeal from the decision of a Department Commander to the Commander-in-Chief, until it has gone through the process of the Department Encampment, the end of justice might often be defeated.

So, I think, the better holding is that, where it is an original act of the Department Commander, or of the Council of Administration, and the Department Encampment not being in session, an appeal will lie direct to the Commander-in-Chief. So holding, what is this case?

Does this record disclose any ground for suspending the charters of these two Posts? *

We must be governed by the record. The offence justifying the action of the Department Commander, if justification there be, must be found in the circular, a part of the record, dated March 25, 1886, and their subsequent endorsement of the general circular issued later.

I am clearly of the opinion that there was nothing in the action of these Posts that justified the action of the Department Commander. These Posts submitted respectful protests and petitions upon matters of vital moment to them. They did it in respectful language, and had an investigation been put on foot by the Department Commander, with notice to the Posts, it may be possible that they would have been able to have offered full explanation or justification for what they did. It would hardly do to lay down a rigid rule that permits officers of the Grand Army of the Republic to punish a Post for simple differences of opinion upon matters of the kind here involved.

I think the Commander-in-Chief should reverse the action of the Department Commander, and reinstate the Posts under their charters, and if individual members have been guilty of wrong-doing, there are means to punish them without the resort to so heroic a treatment.

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* For the better understanding of the action of the National Encampment at San Francisco, on this case, notice that two points are here presented:

First. The right of Posts to appeal from the Department Commander to the Commander-in-Chief, in the interim of sessions of the Department Encampment.

Second. The appeal of the Posts against the act of the Department Commander in suspending them; the appeal being sustained by the Commander-in-Chief, who ordered a reversal of the act of the Department Commander. (See Report of the Judge-Advocate-General, page 116, *Journal*, 1886.)

The decision under the *second* head was non-concurred in by the National Encampment. (See pages 212–214, *Journal*, 1886.)

In order that this action might not be understood as applying to the whole case, the following was then adopted:

Resolved, That in the action taken by the Encampment, in the case of the appeal of the Department of New Jersey, it is not intended to reverse the opinion of the Judge-Advocate-General that a Post may, under proper circumstances, appeal direct to the Commander-in-Chief or National Encampment; and, on the contrary, we reaffirm the opinion to that extent. (See page 240, *Journal*, 1886.) R. B. B.

663 DECISION 6. L. F.

Right of Appeal.—When the legal effect of the action of the National Encampment is one of the questions in issue between the Department Commander and a Post, the right of appeal exists and the Commander should forward the papers.

The questions in this case arose on a letter from a Department Commander stating that he had received an appeal from a Post, which he did not forward because he was of the opinion that "the National Encampment having passed upon the question at issue, it is at rest."

1. Has this Post yet a right to appeal?

2. Should the Department Commander retain and not forward an appeal under these conditions? (See *Journal*, 1886, National Encampment, pages 117, 212, 240.)

OPINION 6. H. E. T. November 29, 1886.

The appeal of the Post appears to be from the decision of the Department Commander as to the legal effect of the action of the National Encampment at its last session. On that question I think they have a right to be heard, and that the Department Commander should forward the appeal for the consideration of the Commander-in-Chief.

664 DECISION 12. L. F.

Where it appeared by the report of the Judge-Advocate-General that he had advised a certain course, but it did not appear on record what action the Commander-in-Chief had taken thereon, it was held that the failure of the National Encampment to approve the opinion of the Judge-Advocate-General was only negative in its force, and that without some positive affirmative action in regard to the decision of the Commander-in-Chief, his decision was not reversed.

A Post was suspended by the Department Commander, from which action an appeal was taken to the then Commander-in-Chief, who reinstated the Post. An Opinion in the case, dated July 19, 1886, was given by the then Judge-Advocate-General (662, page 147, BLUE-BOOK).

The matter came before the Twentieth National Encampment, on the question of approving the Opinion of the Judge-Advocate-General, and action was taken as stated in the Opinion below.

On August 28, 1886, the Department Commander notified the Post that the action of the National Encampment had reversed the decision of the Commander-in-Chief, and that the original order suspending the Post remained in force.

From his decision and action the Post took the present appeal, claiming, among other things, that the action of the Twentieth National Encampment did not reverse the decision of Commander-in-Chief Burdett reinstating the Post.

[Chapter 3.—Article 7.]

Opinion 12. H. E. T. January 5, 1887.

The decision of the question submitted involves a construction of the doings of the last National Encampment, and in their consideration we must take the action as we find it in the officially published proceedings.

On reference thereto we find the following facts:

By the address of the Commander-in-Chief (see page 41, *Journal*, 1886) it appears that he had decided "that a Department Encampment not being in session, an appeal from the original act of the Department Commander or Department Council of Administration may be made direct to the Commander-in-Chief."

That is all the decision that appears on the record, and that is the only question submitted by the Commander-in-Chief to the Encampment in this matter.

In the report of the Judge-Advocate-General (see page 116, *Journal*, 1886) we find the opinion on which is based the above decision of the Commander-in-Chief.

The first part of the opinion deals entirely with the law of the case in its bearings on the question of appeal. In the latter part the Judge-Advocate-General goes on to consider the facts in the case, and then *advises* that the Post be reinstated. What action the Commander-in-Chief took on that advice does not appear, but from statements in the present appeal he evidently reinstated the Post. It is hardly necessary to say that the province of the Judge-Advocate-General is only advisory, and that neither his advice nor opinion becomes law until adopted and promulgated by the Commander-in-Chief.

Such being the state of the case, what was the action of the National Encampment?

The Committee on the Report of the Judge-Advocate-General reported (page 212, *Journal*, 1886) "that the opinions of the Judge-Advocate-General are correct and that they should be approved." A motion was made "that the report be adopted," and Comrade Cole, of New Jersey, moved, as a substitute, "that the report be adopted, with the exception of that part relating to the Department of New Jersey," which substitute resolution was passed. (See *Journal*, page 213.)

Subsequently (see page 240, *Journal*, 1886) the Encampment passed the following:

Resolved, That in the action taken by the Encampment, in the case of the appeal of the Department of New Jersey, it is not intended to reverse the opinion of the Judge-Advocate-General, that a Post may, under proper circumstances, appeal direct to the Commander-in-Chief or National Encampment; and, on the contrary, we reaffirm the opinion to that extent.

The effect of the substantive resolution was purely *negative;* it simply failed to approve the opinion of the Judge-Advocate-General, and perhaps, inferentially, the decision of the Commander-in-Chief as to the right of appeal. The passage of the subsequent resolution, however, affirmed the opinion of the Judge-Advocate-General, and, inferentially, the decision of the Commander-in-Chief on the right of appeal.

The way was now open for such *affirmative* and positive action, at the instance of interested parties, as would override any decision the Commander-in-Chief may have rendered relative to the reinstatement of the Post; but no such action anywhere appears. The Department Commander was apparently satisfied to leave the matter where it then stood, and entirely failed to press any advantage he may have so far gained.

We have then a failure of the Encampment to approve certain *advice* contained in an opinion of the Judge-Advocate-General, but no action whatever and no question raised on the record as to the decision of the Commander-in-Chief, in view of that advice.

It is an elementary principle recognized in our Rules and Regulations, Chapter 3, Article 7, that a decision must stand until reversed by competent authority. No motion was ever made to reverse the decision of the Commander-in-Chief in the matter of reinstating the Post, and that matter never came before the Encampment.

Whether the failure to take action in that direction was a result of misconception of the situation by the Department Commander, or merely an oversight, is not important.

I do not think the Commander-in-Chief should now do indirectly what the Encampment failed to do at the time when it had the opportunity, with interested parties before it; nor do I think he would be justified in acting upon the assumed intention of the Encampment, on a question which was never before it.

I am therefore of opinion that the action of the Twentieth National Encampment did not overrule any decision of the Commander-in-Chief in this matter or in any way affect the *status* of the Post; and that the Department Commander, in notifying it that the original order of suspension was in force by virtue of the action of the National Encampment, was in error.

In view of the above opinion, it becomes unnecessary to consider the other questions raised on the appeal.

665 DECISION 9. J. P. R.

Appeals on speculative questions. Responsibility of Past Department Commanders to their Departments.

It is not within the province of the Commander-in-Chief to decide merely speculative questions which may be submitted for his opinion. A ruling "on the subject of responsibility to their several Departments of Past Department Commanders, and others who are eligible to seats in the National Encampment, and to what extent they are responsible for obedience to the instructions of their Departments on subjects coming before the National Encampment," would be a mere personal opinion, possessing no official authority and likely to do more harm than good.

OPINION 9. W. G. V. July, 1888.

This is not an appeal from a ruling in a controverted matter.

A Post passed a resolution as follows:

Resolved, That the Post respectfully asks the ruling of the Commander-in-Chief of the Grand Army of the Republic on the subject of responsibility to their several Departments of Past Department Commanders and others who are eligible to seats in the National Encampment, and to what extent they are responsible for obedience to instructions of their Departments on subjects coming before the National Encampment.

I am asked to give an opinion (1) on the question submitted, and (2) upon the propriety and advisability of deciding questions of this character which do not arise regularly upon an appeal.

[Chapter 3.—Article 7.]

Upon the first point, I do not think that any of the persons eligible to seats in a National Encampment, whether eligible by reason of election as representatives or otherwise, stand in such an attitude to the Department from which they respectively come, and are so bound to obey instructions of the Department in the matter of voting upon questions before the National Encampment, as to become subject to discipline for disobedience of orders. In this respect I think they stand like members of the State and national Legislatures. Our organization is purely voluntary, and so long as a person is a member of it, he is bound to do whatever the Rules and Regulations require, and obey such orders as they provide may be made, and for failure he must suffer the penalties provided.

These penalties cannot transcend or violate the laws of the land. An order of a Department to a representative to do an act in the National Encampment, lawful and proper in itself, not involving a possible violation of conscience, as, for instance, to present a petition or state the vote of the Department on a measure, would, I apprehend, be binding upon the representative, and he would become subject to discipline for disobedience. He could obey without violation of conscience, whatever his view was as to the subject-matter of the petition. The offences cognizable by the Grand Army are stated in Section 1, Article 6, Chapter 5, Rules and Regulations, and do not seem to me to cover this case.

The National Encampment, in which the supreme power of this association is lodged, is in its nature largely, though not wholly, a legislative body, and its members, as in other like bodies, preserve their individual sovereignty. A representative is not a mere special agent limited in the exercise of judgment and conscience to specific instructions and orders. The question is not as to the propriety of accepting an election on a platform at the time adopted, and not standing upon it afterwards. The question is whether, in voting upon measures involving the exercise of judgment and conscience, the member voting contrary to Department instructions may be disciplined therefor as for disobedience of a duty expressly prescribed. Until the National Encampment has so legislated, I think such a ruling would violate American practice and theory, and would be without express or implied authority in our Rules and Regulations.

I believe it is better that the discipline should be here as in political legislation, in the moral punishment which an American constituency is sure to inflict upon a member who misrepresents them in legislative action.

Upon the second point I am clearly of the opinion that there is neither profit nor propriety in the Commander-in-Chief ruling upon questions of this character which do not come up regularly upon appeal. His power to issue orders is limited to such orders as may be necessary to enforce the Rules and Regulations and the orders of the National Encampment and the Council of Administration. His judicial power is to "*decide* all questions of law or usage." (Article 6, Chapter 4, Section 1, Rules and Regulations.) This means that he is to decide between controverting parties upon a case presented. He is not the legislative body to make law, but the judge to decide what the law is when disputes arise, subject to appeal from his decision to the National Encampment, which is to this extent the ultimate judicial tribunal, a court of appeals. This resolution comes to you not *inter partes*, not by appeal from a decision by an aggrieved party, not upon hearing. You are asked to make a ruling before a case has arisen. The Commander-in-Chief is, as his title imports, the executive officer, but he has a judicial function as above indicated. I do not think the Rules and Regulations impart to him legislative function. His opinion as to what the law is, except as involved in the *decision* of a *case* that comes to him by appeal, would have no official sanction, and

ARTICLE 8.

67* Voting.

Each member present at a meeting of the Department Encampment shall be entitled to one vote. The ayes and noes may be required by any three members representing different Posts.

ARTICLE 9.

68 Representatives.

Representatives to the National Encampment shall be chosen from comrades of the Department, as provided in Chapter 4, Article 2, of these Regulations.

Note 66[5] continued.

would be valuable only as the opinion of any other individual of equal attainments and ability; it would not become a law by the fact of his promulgation.

I think that this view is not only the fair import of our Rules and Regulations, but that it is fortunate it is so. The Commander-in-Chief has already quite enough burdens. Moreover, there could be but little profit in his laying down general rules of law even if he had the authority.

The peculiar feature of each controverted question would be claimed to take it outside the general rule, and there would be likely to be quite as many cases arise and come to him for decision.

In the construction of the Rules and Regulations in reference to the extent or scope of authority of the different departments of our Order,—the executive, legislative, and judicial,—I think there will be greater safety in adhering to strict, rather than liberal, rules. Thereby the individual rights will be more likely to be preserved and the interests of the Order promoted.

66[6] DECISION 10. S. S. B.

1. A Post may appeal from and reverse the decision of the Post Commander, as well upon a question relative to the Rules and Regulations as upon questions arising upon the proper construction of the By-Laws of the Post.

2. A Post Commander may refuse to entertain a motion, believing it to be out of order; but an appeal will lie from his decision.

See statement and Opinion 107[4], page 181.

67[1] NOTE.—When the ayes and noes are required each vote should be entered on the *Journal*.

Tellers should be appointed to record the votes as called from the roll, and at the conclusion of the roll-call the names of those voting *aye* should be read, then of those voting *no*, so that errors may be corrected before the result is announced. R. B. B.

ARTICLE 10.

69* By-Laws.

Department Encampments may adopt By-Laws for the government of the Department, not inconsistent with these Rules and Regulations or the By-Laws or orders of the National Encampment, and may provide for the alteration and amendment thereof.

69[1] DECISION 5. J. S. K.

Department By-Laws. Relief Fund.

A Department Encampment having provided by its By-Laws for a Relief Fund, to be raised by assessments and donations, and a Board to manage and disburse the same, a subsequent Encampment cannot, by resolution, transfer the money in this Relief Fund to its General Fund.

A Department Encampment adopted a code of By-Laws, providing therein for a Department Relief Fund, and a Board of Trustees to manage and disburse the same, such fund to be raised by "Assessments and Donations." During the year moneys were received for this fund, but how much and from what source, whether by assessments, donations, or both, does not appear. At the next Annual Encampment a resolution was passed transferring all the money in the Relief Fund to the General Fund of the Department. Against this action a Post presented a protest to the Department Commander, in which it was claimed that, inasmuch as the resolution conflicted with the By-Laws previously adopted, it was illegal. This protest was returned to the Post by the Department Commander, he holding that the resolution adopted by the Encampment of 1884 in relation to this fund, *being in conflict* with the By-Laws adopted by the preceding Encampment creating the fund, operated to repeal such By-Laws, and therefore the transfer of the money in the Relief Fund to the General Fund was lawful.

From this decision the Post appealed.

OPINION 5. D. R. A. December 13, 1884.

Chapter 3, Article 10, Rules and Regulations, provides that "Department Encampments may adopt By-Laws for the government of the Department, . . . and may provide for the alteration and amendment thereof."

The Department Encampment, under this authority, having duly enacted its By-Laws, and provided therein for a Relief Fund, and having further provided the manner by which such By-Laws could be altered or amended, these By-Laws became the fundamental law for the government of all future Encampments, until the same were altered or amended as therein provided. Until this was done in the manner prescribed, these By-Laws remained in full force, and were as binding upon future Encampments as upon the one adopting them. They could not be altered, amended, or repealed by a resolution not passed in conformity with the requirements of such By-Laws.

The resolution was "That the money in the Relief Fund be transferred to the General Fund." There is nothing in its language to imply that it was the object of the mover to repeal the By-Laws creating the Relief Fund and Board. Its terms applied to the fund alone; and if in itself effectual to transfer the money therein to the General Fund, there is nothing in it to prevent a future Encampment from transferring it back into the Relief Fund, or to prevent this fund from being replenished by future assessments and donations. The effect of the resolution, if legal, was only to interrupt the operations of the Relief Board by depriving it of its then existing fund.

The next question presented in this case is whether the Encampment of 1884 had power to transfer the money in the Relief Fund to the General Fund. The Rules and Regulations, Chapter 5, Article 12, authorizes Posts to provide for a Relief Fund, and expressly declares that such fund "shall be held sacred for such purpose." This applies also to Departments. In this case this Relief Fund, whether raised by assessments or donations, became a Trust Fund for a specified purpose, and the Department had no further control over it than to use it for the special purpose for which it was provided. It would be manifestly unjust for one Department Encampment to adopt measures to provide a fund, either by assessment or voluntary contribution, for a purely charitable purpose, and the next Encampment to lay its hands on such fund and pervert it to other and entirely different uses.

For these reasons I am of opinion that this resolution was wholly inoperative and void, both as to the transfer of the money in said Relief Fund to the General Fund, and as to the repealing or in any manner affecting the By-Laws under which such fund was established.

CHAPTER IV.

ARTICLE 1.

NATIONAL ENCAMPMENT.

70 National Encampment.

The supreme power of this Association shall be lodged in the National Encampment.

ARTICLE 2.

MEMBERSHIP.

71 Officers and Past Officers.

SECTION 1. The National Encampment shall be composed:

1. Of the Commander-in-Chief, Past Commanders-in-Chief, and Past Vice-Commanders-in-Chief, so long as they remain in good standing in their respective Posts, and the other officers named in Article 4, Section 2, of this chapter.

72 Department Officers.

2. Of the Commanders, Vice-Commanders, and Assistant Adjutant-Generals of the several Departments, and the Commander and Assistant Adjutant-General of each Provisional Department for the time being (for whom no proxy or substitute can act).

73* Past Department Commanders.

3. Of Past Department Commanders who have served for a full term of one year, or who, having been elected to fill a vacancy, shall have served to the end of the term, so long as they remain in good standing in their several Posts; (1) and

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73[1] For references to Past Department Commanders, see *Notes 49 1–6*, pages 126–130.

74* Representatives.

4. Of one representative at large from each Department, and one representative for each one thousand members in good standing therein, and one additional representative for a final fraction of more than one-half of that number; such representatives to be elected by the Department Encampment as provided in Chapter 3, Article 9. Any Department having less than one thousand members and more than five hundred, shall be entitled to one representative in addition to one representative at large (1).

Representatives elected.

SECTION 2. The representatives shall be elected at the time and in the mode of electing officers of Departments, and their number shall be ascertained and fixed by the last preceding return of members entitled to be counted in representation, as filed with the Adjutant-General (2). Each Department shall also elect, in the same manner and at the same time, an equal number of alternates. They shall be furnished with credentials signed by the Commander and Assistant Adjutant-General, a copy of which shall be forwarded to the Adjutant-General immediately after their election. Any vacancies occurring by written resignations that may exhaust the list of alternates entitled to serve in place of absent representatives, may be filled by the Department Council of Administration, duly called and sitting within its own jurisdiction. Such alternates shall serve in the order of their election (3, 4).

74[1] OPINION 20. January 11, 1872.

Representatives—National Encampment—Department representation.

If a Department has over 500 members and less than 1000, how many representatives in the National Encampment is it entitled to?

The meaning of Chapter 5, Article 2, Section 1, paragraph 4, is, in my opinion, that 1000 members in good standing shall constitute the unit of representation of a Department in the National Encampment, and that a final fraction of more than half of that unit—that is, more than 500 members—shall count as 1000.

Every Department would, therefore, be entitled to the representative at large; and, if composed of between 501 and 1500 members, to one representative in addition,—counting for representation every 501 members to 1500 members as 1000, every 1501 to 2500 as 2000, etc.

[Chapter 4.—Article 2.]

In the case stated the Department would be entitled to elect one representative at large and one additional representative for the 501 members.

As suggested by the comrade proposing the question, the paragraph is not altogether lucid, but I think a strict construction of the whole section will support my opinion.

742 The Encampment at Cleveland, 1872, adopted a resolution that all reports of National officers, except that of the Commander-in-Chief, should be made up to December 31. Representatives from Departments are to be elected on the basis of the returns for the quarter ending December 31

743 *Vacancies on Roll of Representatives.*—The question has arisen in the National Encampment as to the order of choosing alternates to fill vacancies. It was ruled that the order in which they stand on the roll should govern. The "alternate at large" will fill the first vacancy, and so on in succession until the roll is exhausted or the places filled. The last paragraph was added to cover this point. R. B. B.

744 DECISION 33. L. F.

Representatives to the National Encampment enter upon their office immediately after the adjournment of the meeting at which they were chosen.

Question submitted as to when the representatives to the National Encampment become recognized members of that Encampment.

OPINION 33. H. E. T. May 31, 1887.

The Rules and Regulations fail to directly specify the commencement of the term of office of a representative to the National Encampment, and we must therefore reason by analogy.

Referring to Chapter 3, Article 2, we find that the representatives to the Department Encampment are elected at the same time and in the same mode as Post officers, and serve from the first day of January following their election, thus practically conforming to the term of Post officers.

By Chapter 4, Article 2, Section 2, representatives to the National Encampment are elected at the same time and in the same manner as Department officers, and a copy of their credentials is to be at once forwarded to National Head-quarters.

Chapter 3, Article 5, Section 2, provides that the elective officers of a Department enter upon their duties immediately after the adjournment of the meeting at which they are chosen.

Where no time is specified, it is also a general rule that an official assumes the duties of his office immediately after his election.

I am therefore of opinion that representatives to a National Encampment are elected for the same period as Department officers, and that they assume their office immediately on the adjournment of the meeting at which they are chosen.

75 Arrearages.

SECTION 3. Whenever Posts are in arrears, their entire membership shall not be counted for representation in the National Encampment.

SECTION 4. Departments and Provisional Departments in arrears for reports or dues shall be excluded from all representation in the National Encampment until the same are forwarded. (See *Note 90*[2].)

ARTICLE 3.

76* Meetings of National Encampment.

SECTION 1. The stated meeting of the National Encampment shall be held annually between April and November, as may be fixed by the Commander-in-Chief, by consent of the Council of Administration, and at such place as shall have been determined at the previous stated meeting.

SECTION 2. Special meetings may be convened by order of the Commander-in-Chief, by and with the advice and consent of the National Council of Administration.

ARTICLE 4.

OFFICERS.

77 Eligibility to Office.

SECTION 1. All members in good standing shall be eligible to any national office in the Grand Army of the Republic.

78* National Officers.

SECTION 2. The National officers of the Grand Army of the

76[1] The meetings of the National Encampment were originally required by the Rules to be held on the second Wednesday in May. At the Encampment in Philadelphia, 1876, this article was amended by allowing the time to be fixed between the second Wednesday of May and the first Wednesday of July, by the Commander-in-Chief and Council, and at the Baltimore Encampment, 1882, this was again changed by striking out July and inserting September. It was further changed at San Francisco to read as above. R. B. B.

78[1] The Commander-in-Chief is authorized to appoint an Assistant Adjutant-General (Article 6, following), but that officer is not entitled to a vote, as such, in the National Encampment. R. B. B.

Republic shall be a Commander-in-Chief, a Senior Vice-Commander-in-Chief, a Junior Vice-Commander-in-Chief, an Adjutant-General, a Quartermaster-General, an Inspector-General, a Judge-Advocate-General, a Surgeon-General, a Chaplain-in-Chief, and a Council of Administration, consisting of the above-named officers and one comrade from each Department, to be chosen by the National Encampment (1).

ARTICLE 5.

ELECTION OF NATIONAL OFFICERS.

79* Election.

SECTION 1. The National officers of the Grand Army of the Republic, except the Adjutant-General, the Quartermaster-General, the Inspector-General, and the Judge-Advocate-General, shall be elected annually, by ballot, at the stated meeting of the National Encampment, in the manner prescribed for the election by ballot of officers of Posts in Chapter 2, Article 7, Section 2.

80* Installation.

SECTION 2. They shall enter upon the duties of their respective offices immediately after the adjournment of the meeting at which they were elected, and shall hold office until their successors are duly installed (1).

81* Vacancies.

SECTION 3. Vacancies occurring during the year shall be filled by the Council of Administration (1, 2).

79[1] See *Note 34*[1], page 104; *Note 35*[1], page 109. *Voting.*

80[1] See *Note 34*[3], page 105.

81[1] OPINION 25. W. W. D. February 3, 1872.

Vacancy in National Council of Administration—Commander-in Chief has no power to fill.

Has the Commander-in-Chief power to fill a vacancy occurring in the National Council of Administration, in the interval between its sessions?

The Regulations, Chapter 4, Article 5, Section 3, provide that vacancies in the National offices occurring during the year shall be filled by the National

ARTICLE 6.

DUTIES OF OFFICERS.

82 Commander-in-Chief.

SECTION 1. The Commander-in-Chief shall enforce the Rules and Regulations of the Grand Army of the Republic, and the orders of the National Encampment and the Council of Administration, and for this purpose he may issue such orders as may be necessary.

He shall preside in the National Encampment and Council of Administration, decide all questions of law or usage, subject to an appeal to the National Encampment; approve all requisitions properly drawn on the Quartermaster-General, and shall hold all securities given by National officers, as trustee for the Grand Army of the Republic. He shall appoint, immediately after entering upon his office, the Adjutant-General, the Quartermaster-General, the Inspector-General, the Judge-Advocate-General,

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Note 81[1] continued.

Council of Administration. I cannot imagine any necessity for filling a vacancy except when the Council are together, and then they can fill it themselves. The members of the Council have no duties except in their meetings. No doubt, in cases of other officers who have duties to perform at all times, the Commander-in-Chief may detail a comrade to act until the Council of Administration meet. I think, therefore, in this case the Commander-in-Chief has no power.

81[2] DECISION 22. L. F.

The Commander-in-Chief has no power to fill vacancies in the National Council of Administration.

A comrade having been elected Department Commander, resigns his position as a member of the National Council of Administration, and recommends another as his successor. Has the Commander-in-Chief authority to appoint a member of the Council of Administration, or is there any authority for such appointment outside of the National Encampment?

OPINION 22. H. E. T. March 12, 1887.

In my opinion the Commander-in-Chief has no authority to appoint a member of the Council of Administration; but the Council may itself fill any vacancy, under the power conferred by Chapter 4, Article 5, Section 3, Rules and Regulations.

an Assistant Adjutant-General, as many Assistant Inspectors-General on the nomination of the Inspector General, and as many Aides-de-Camp as he may deem necessary. He shall appoint all other National officers and committees not otherwise provided for, and may remove these officers at his pleasure. He shall promulgate through the proper officers the National countersign, and may change the same at his discretion, and shall issue to all Departments, regularly organized, suitable charters, and appoint Provisional Commanders in States and Territories where there is no Department organization.

83 Vice-Commanders-in-Chief.

SECTION 2. The Vice-Commanders-in-Chief shall assist the Commander-in-Chief by counsel or otherwise, and in his absence or disability they shall fill his office according to seniority.

84 Adjutant-General.

SECTION 3. The Adjutant-General shall keep correct records of the proceedings of the National Encampment and Council of Administration; he shall conduct its correspondence and issue the necessary orders, under the direction of the Commander-in-Chief. All returns received by him from Departments shall be turned over to the proper officers.

He shall prepare all books and blanks required for the use of the Grand Army of the Republic, under the direction of the Commander-in-Chief. He shall draw requisitions on the Quartermaster-General, to be approved by the Commander-in-Chief; and shall perform such other duties and keep such other books and records as the Commander-in-Chief or the National Encampment may require of him. He shall give security for the faithful discharge of his duties, to be approved by the Commander-in-Chief, and shall receive as compensation for his service such sum as the National Encampment may from time to time determine.

85 Quartermaster-General.

SECTION 4. The Quartermaster-General shall hold the funds, securities, and vouchers of the National Encampment, and fill all requisitions drawn upon him by the Adjutant-General and approved by the Commander-in-Chief. He shall distribute all books

and blanks required for the use of the Grand Army of the Republic, and, under the direction of the Commander-in-Chief, charge a reasonable and uniform price for the same. He shall give good and sufficient security, in a sum to be approved by the Council of Administration, for the faithful discharge of his duties, and shall receive such compensation for his services as the National Encampment may from time time to determine.

86 Inspector-General.

SECTION 5. The Inspector-General shall perform such duties as are required of him by Chapter 5, Article 5, and shall receive such compensation for his services as the National Encampment may from time to time determine.

87 Surgeon-General.

SECTION 6. The Surgeon-General shall perform the duties properly appertaining to that office.

88 Chaplain-in-Chief.

SECTION 7. The Chaplain-in-Chief shall perform such duties in connection with his office as the Commander-in-Chief or the National Encampment may require.

89 Judge-Advocate-General.

SECTION 8. The Judge-Advocate-General shall perform the duties belonging to that office.

90* National Council of Administration.

SECTION 9. The National Council of Administration shall meet at such place as may be determined by the National Encampment at its stated meeting, and at such other times and places as the Commander-in-Chief may order, and ten members shall constitute a quorum. It shall audit the accounts of the various National officers, may propose plans of action, and shall represent in all matters the National Encampment in the interval

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90[1] The National Council of Administration, by resolution of the National Encampment, 1877, is directed to meet immediately after the adjournment of the Encampment, and may select a smaller number to act for the Council during the interim.

between its sessions. It shall keep full and detailed records of its proceedings, and present the same as its report at the stated meeting of the National Encampment, for the consideration of that body (1, 2)

91* Reports.

SECTION 10. The several staff officers shall present to the National Encampment, at each annual session, full and detailed reports, *in print*, of the operations of their respective departments, and when retiring from office shall deliver to their successors all moneys, books, and other property of the Grand Army of the Republic in their possession, or under their control.

ARTICLE 7.

92* Voting.

Each member present at a meeting of the National Encampment shall be entitled to one vote. The ayes and noes may be required and entered upon record at the call of any three members representing different Departments.

90[2] OPINION 12. W. W. D. October 1, 1871.

National Council of Administration—Rights of members of, whose Departments may be in arrears.

The questions proposed appear sufficiently in the Opinion.

I think that all the members of the National Council of Administration may sit, whether the Departments they come from are in arrears or not.

First. Because the cause of exclusion, in terms, only applies to *representation* in the National Encampment, and penal statutes are always to be construed strictly.

Second. Because the Council of Administration are National officers of the Grand Army of the Republic, elected by the National Encampment, not by Departments, and are not representatives of Departments except in a most general sense. I think the members of the Council should be no more dependent, for their right to sit there, on the *status* of their Departments, than the Commander-in-Chief would be or any other of the National officers.

91[1] These reports are to be made for the year ending December 31. (Resolution, National Encampment, 1870.) It has, however, been customary to bring the report of the Quartermaster-General up to the date of meeting. (See *Note 74*[2], page 158.) R. B. B.

92[1] Rule 24, Rule 29, *Rules of Order*, page 254.

ARTICLE 8.

93 Disbursements.

Disbursements from the treasury of the National Encampment shall only be in behalf of the objects of the Grand Army of the Republic, or its incidental expenses, and shall be made either by direction of the National Encampment or Council of Administration. All requisitions for money must be drawn by the Adjutant-General and approved by the Commander-in-Chief.

CHAPTER V.

GENERAL RULES.

ARTICLE 1.

CHARTERS.

94* Post Charters.

SECTION 1. All Post charters shall be signed by the Commander and countersigned by the Assistant Adjutant-General of the Department within which the applicants for such charter reside. The application for a charter shall be signed by at least ten persons eligible to membership in the Grand Army of the Republic, as provided in Chapter 2, Article 1, and shall be accompanied by a charter fee of ten dollars.

Muster of Posts.

SECTION 2. On the receipt of such application, the Department Commander shall examine the qualifications of the applicants, and if satisfied of their eligibility, and that it is for the interest of the Grand Army of the Republic to form such Post, he shall, either in person or by some officer of the staff, proceed to admit the applicants into the Grand Army of the Republic, superintend the election of the Post officers for the remainder of the current year, and complete the organization of the Post (1–6):

94[1] OPINION 130. G. B. S. March 15, 1882.

Consent of an existing Post not necessary for the organization of a new Post.

Can a Post of the Grand Army of the Republic be established in a town or city where a Post already exists, without the petitioners first obtaining the consent of the Post already established?

The Rules and Regulations of the Grand Army of the Republic have vested in the Department Commander the power to grant charters to Posts, and there is no provision anywhere requiring the permission of existing Posts to be first gained.

Provided, That any comrades, who have been refused a charter for a Post by a Department Commander, may appeal to the Commander-in-Chief, and he, with the approval of the Executive Committee of the National Council of Administration, is empowered to order the Department Commander to issue the charter (2).

Note 94[1] continued.

It is not improper for a Department Commander to ascertain whether the good of the Order will be best conserved by rejecting an application for a charter, and he may apply to an existing Post for information; but the entire responsibility of his action must rest with him, and he may grant or reject an application without reference to any existing Post.

94[2] DECISION 1. L. F.

*The responsibility of granting or refusing a Post charter rests solely with the Department Commander, and his decision is an exercise of discretion which will not be reversed, except for manifest abuse of his power.**

A Department Commander granted a charter and organized a second Post where a Post already existed.

From this action this Post appealed, and asked that the charter of the new Post be rescinded.

OPINION 1. H. E. T. September 25, 1886.

Under Opinion 130, March 15, 1882 (94[1]), the objection of the existing Post could not operate to prevent the legal formation of the new Post.

By Chapter 2, Article 1, Section 1, Rules and Regulations, the sole authority to form a new Post, where a Department organization exists, is vested in the Department Commander. Upon him alone rests the responsibility; and while he should carefully examine the ground to ascertain the needs of the Order and the probable effect of his action, the decision of the question is an exercise of discretion on his part, which cannot be reversed save for a manifest abuse of it. No such abuse appearing in the present case, and no question arising as to the legal organization of the new Post, I am of the opinion that the action of the Department Commander should stand and the appeal be dismissed.

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* This Decision will now be governed by the proviso added to this section by the National Encampment at St. Louis, 1887, investing the Commander-in-Chief with certain authority in reference to charters of Posts, upon an appeal.

94[3] DECISION 23. J. P. R.

Charter of Posts.

The authority of a Department Commander to organize Posts within his jurisdiction is exclusive. The Commander of another Department cannot lawfully establish a Post therein. (See *Note 94[2]*.)

94[4] DECISION 19. L. F.

Application for the charter of a Post requires the signatures of not less than ten members eligible to membership therein. A charter issued for a lesser number has no legal force and should be recalled.

An application for charter was signed by ten persons supposed to be eligible. A charter was granted and the Post was mustered and organized with eight of the ten applicants present. It subsequently appeared that of the ten applicants, one was, at the time of signing, and long after the muster of the Post continued to be, a member of an existing Post, with no desire or intention to sever his membership, while two of the eight present at the time of organization had been members of other Posts and had never taken discharge or transfer therefrom.

The right of the Post to representation in the Department Encampment having been disputed, a committee was appointed, which reported the facts stated above and that they found the Post not legally organized.

The Encampment adopted the report and refused to admit the Post to representation.

The Department Commander submitted the following questions:

1. Was the action of the Encampment proper?

2. In the light of such action what should be the attitude of the Department Commander towards the Post?

3. Should the Post be recognized by him? or,

4. Should its charter be annulled or suspended?

OPINION 19. H. E. T. February 26, 1887.

From the facts stated, it is evident that the application for charter in this case was signed by less than "ten persons eligible for membership." The action of the Department Commander in attempting to grant a charter and organize the Post was therefore without authority and illegal, and the Post, not having a legal charter, could not be recognized. (See Chapter 2, Article 1, Section 1, Rules and Regulations.)

I am therefore of opinion that the action of the Encampment was proper, and that the Department Commander cannot recognize the Post.

Technically, the charter cannot be suspended or annulled, for it has never had legal existence or force; but it should be recalled. Those whom it was attempted to admit to membership have acquired no rights, and not having been legally introduced into the Order, are not members. (See Opinion 11, September 29, 1871 (17[2]), page 65, BLUE-BOOK.)

If desired, however, and there are a sufficient number eligible, I see no objection to their filing a new application on which a legal charter may be granted them, if the Department Commander is satisfied that it is for the interest of the Order to form such Post.

95* Surrender of Charters.

SECTION 3. Post charters may be surrendered voluntarily when less than ten members desire the continuance of the Post, as provided in Chapter 2, Article 1. In case of surrender or forfeiture of a charter, the property of the Department, including books of record and Post papers, shall be immediately turned over to the Assistant Quartermaster-General of the Department, and shall be subject to the disposition of the Department Encampment (1, 2).

See Section 2, Article 1, Chapter 2, page 56.

94[5] DECISION 28. L. F.

Where a Post charter has been destroyed by fire, the Department Commander may issue another without expense to the Post; the new charter to bear the names of the original members, and to refer to the fact that it is issued in place of the one so destroyed.

The charter of a Post is destroyed by fire. Can the Department Commander grant them a new charter without expense to them, and, if so, should the names of the original charter members be inserted?

OPINION 28. H. E. T. April 15, 1887.

I see no reason why the Department Commander may not grant a new charter without expense to the Post.

Such charter should contain the names of the original members and should refer to the fact that it is given as a substitute for a former charter, dated so and so, and destroyed by fire.

94[6] DECISION 10. J. P. R.

Posts chartered by Commander of Provisional Department.

The Commander of a Provisional Department has the same authority to organize and charter new Posts that is possessed by the Commander of a permanent Department.

95[1] OPINION 44. W. W. D. January 14, 1873.

Charter may be forfeited for neglect to hold monthly meetings—Post cannot surrender charter contingently.

A Post, having paid all dues and forwarded all returns, votes to disband for one year, and forwards a copy of the vote to Department Head-quarters. What is the duty of the Department Commander in the premises?

[Chapter 5.—Article 1.]

96* Suspension of Posts.

SECTION 4. Charters of Posts may be suspended or annulled by the Department Commander, with the advice and consent of the

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Note 95[1] continued.

He should inform the Post that the Rules and Regulations do not permit the surrender of a Post charter contingently, or for a limited time; and, when a Post charter is surrendered, the provisions of Chapter 2, Article 1, Section 2 must be complied with to render such surrender valid. Should it appear doubtful, however, whether the Post ought to be continued, he may, if he thinks proper, call a meeting of the Department Council of Administration, and they may declare the charter of the Post forfeited for neglect to hold monthly meetings. The first course, I think, will be preferable, as the Post seems to desire to dissolve legally.

95[2] DECISION 25. L. F.

A disbanded Post is not required to turn over to the Department cash on hand or real estate purchased with Post funds.

Can a Post build or buy a hall with the Post funds, and hold the same if it should disband, or would the hall and what money it had on hand at the time of disbanding go back to the Department?

OPINION 25. H. E. T. April 6, 1887.

Chapter 5, Article 1, Section 3, of the Rules and Regulations, provides as follows:

In case of surrender or forfeiture of a charter, the property of the Department, including books of record and Post papers, shall be immediately turned over to the Assistant Quartermaster-General of the Department.

The only question is, Does "property of the Department" include Post funds on hand or invested in real estate?

A glance at the legislation on this point may help us. The section originally provided that "the property of the Post" should be turned over. Under that there could have been no question. What, then, is the effect of the change? Does it extend or does it limit the interest which the Department had under the former provision?

I think there is no doubt that it limits the interest, and that funds of the Post should not be turned over to the Department.

I am therefore of opinion that the Department has no claim to the monev on hand, or to real estate purchased with Post funds.

96[1] DECISION 16. S. S. B.

Suspension of Posts.

The suspension of a Post does not throw out of membership in the Grand Army of the Republic the comrades of such Post, and they, being members, are entitled to all the offices and honors previously earned. If any one of such

Council of Administration: *Provided*, That said Posts shall have been notified in writing of said proposed action and given an opportunity to appear before the Council of Administration, by representatives, and purge themselves of offence, if any has been committed, and be heard in their defence: *And provided further*, That in case of suspension of such Post, or annulment of its charter, upon such hearing, all the papers in the case, together with the order of suspension or annulment, shall be forwarded to National Head-quarters for the approval or disapproval of the Commander-in-Chief (1, 2).

97 Department Charters.

SECTION 5. Charters of Departments shall be signed by the Commander-in-Chief and countersigned by the Adjutant-General, and shall be issued to each Department immediately upon the permanent organization thereof.

Note 96[1] continued.

members is a delegate to the National Encampment, member of the Council of Administration, or Past Department Commander, he is still eligible to occupy such position, notwithstanding the suspension of his Post.

OPINION 16. C. H. G. June 18, 1886.

This case comes before me by reason of the following letter:

I respectfully ask an opinion from the Judge-Advocate-General upon the following question:

A Post of this Department has been suspended. In said Post there is a member of the present Council of Administration; also a delegate to the National Encampment; also two Past Department Commanders. Please inform me if such suspension makes vacant the positions of members of Council and delegate to the National Encampment, and prevents the two Past Department Commanders from participating in the Department or National Encampment.

The suspension of a Post, if it has been done properly, does not throw out of membership in the Grand Army of the Republic the comrades of that Post; and they, being members, are entitled to all the offices and honors which they have heretofore earned. The member of the Council of Administration is eligible, notwithstanding that his Post is suspended; and the like result happens in the case of the representative to the National Encampment, and to the Past Department Commanders.

96 DECISION 6. L. F.

The Department Commander may not suspend a Post without the advice and consent of the Council of Administration.

Each Department shall forward to the Adjutant-General therefor a charter fee of twenty dollars.

98 Penalty for Failure to make Reports.

SECTION 6. The National Encampment, at its annual session, or the Commander-in-Chief, with the consent of the Council of Administration, may at any time revoke the charter of a Department which for three-quarters of a year has failed to forward its reports or dues, and may remand such a Department to a provisional condition.

ARTICLE 2.

RETURNS AND REPORTS.

99* By Post Commander.

SECTION 1. Each Post Commander shall make semi-annual returns to the Assistant Adjutant-General of the Department on the first day of January and July. He shall at the same time forward the names of all members of his Post, in good standing, who have held the position of Commander-in-Chief, Senior Vice-Commander-in-Chief, Junior Vice-Commander-in-Chief of the National Encampment, or of Department Commander, and a list of the names of rejected applicants. The name of a person dishonorably discharged shall be forwarded at once.

99[1] The National Encampment at Boston, 1890, adopted unanimously a resolution substituting semi-annual for quarterly reports. Under the instructions issued by Commander-in-Chief Veazey, semi-annual reports will be made for June 30 and December 31.

99[2] The following resolution was adopted by the National Encampment at Indianapolis, 1881:

Resolved, That Department Commanders be recommended to publish in General Orders such Posts as fail to send in their reports within twenty days.

99[3] The report of the Post Adjutant is styled Form A.

The report of the Post Quartermaster is styled Form B.

The report of the Assistant Adjutant-General is styled Form C.

The report of the Assistant Quartermaster-General is styled Form D.

Blanks for these reports are furnished free by National Head-quarters upon requisition from Department Head-quarters.

The Assistant Adjutant-General should, before the expiration of the term,

send the required blanks in duplicate to the Post Commander, with an addressed envelope in which the completed reports are to be returned to him.

If the Post Commander has not received these blanks, he should make timely requisition for them.

The Post Adjutant must prepare, under the direction of the Post Commander, all reports and returns required of him. The Post Quartermaster shall make and deliver to the Post Commander all reports and returns required of him. (Sections 3 and 4, Article 8, Chapter 2, page 122.)

These returns are to be forwarded *by the Post Commander to the Assistant Adjutant-General on the first days of January and July.*

The requirements of the Rules and Regulations are clear and explicit. The responsibility of forwarding the Reports upon the days stated is laid directly upon the Post Commander.

It is his place to *know* that the records of his Post are so kept that there shall be no delay in making and forwarding the reports. With timely attention there should be no difficulty in making up the reports on the day following the last meeting of the quarter. In many Posts it is the rule to make up the returns at the close of the last meeting in the quarter, and this, which is within the compass of each Post, will avoid the labor and annoyance that follow unnecessary delay. A Post Commander desirous of making a good record for his Post at Department Head-quarters *will have his reports in the mail on the dates prescribed.*

He should be able to read to his Post at the first or second meeting in the term the acknowledgment from the Assistant Adjutant-General of the prompt receipt of his reports.

Much of the delay and annoyance in making reports is caused by failure to keep duplicate copies, and where books are carelessly kept the result is shown in reports that do not agree. The Commander should compare the reports before forwarding them, and see that the "Number in good standing" on Form A, and the "Balance cash on hand" on Form B, on the retained copies for the previous quarter, are properly brought forward for the current report.

The "Number remaining in good standing" on the Recapitulation of Form A is the number upon which dues are to be paid and reported on Form B. On the Recapitulation the number of those "gained" added to "Number in good standing at last report" make the "Aggregate," from which will be deducted the "Losses during the term," leaving "Number remaining in good standing."

In this simple addition and subtraction there should be no mistake, and yet errors therein are frequent, causing considerable correspondence and adding unnecessarily to the labors of Post and Department officers.

Under the head of "Losses during the term," "dropped" members are not to be included; such were previously taken off the rolls under "Suspension." But the names of those "dropped" during the quarter will be given in the

[Chapter 5.—Article 2.]

100* By Assistant Adjutant-General.

SECTION 2. The Assistant Adjutant-General of each Department shall, on receipt of returns, note thereon the date of reception, and turn over the Quartermaster's and Surgeon's returns to the Assistant Quartermaster-General and Medical Director respectively. He shall consolidate the returns of the Post Adjutants within twenty days after the beginning of each term, for the in-

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Note 99³ continued.

column "Losses from all causes." If the Quartermaster would keep a small memorandum-book, and enter the names of comrades suspended, with the date, and with a space to add the date of "dropped" or "reinstated," it would avoid much of the confusion apt to arise from depending on slips containing such notes. As a comrade is dropped or reinstated, a pencil should be drawn through the name, thus leaving only the names of those remaining suspended to be reported.

It is the duty of the Assistant Adjutant-General to notify Posts when the returns have not been received. (See Opinion 49, page 185.) This notification is not a matter *personal* to the Post Commander; it is an official communication, which it is the duty of the Commander to have read to the Post for its information. If the returns have been forwarded, and have miscarried, proper explanation can be made for the apparent neglect of an important duty. (See Opinion 8, page 184, as to the duty of the Commander-in-Chief when a Department Commander neglects to forward his returns.) The same discipline is applicable to the delinquent Post Commander.

99⁴ DECISION 25. J. P. R.

Post returns.

The quarterly returns of a Post may be legally and properly made and transmitted before the end of the term. In fact, it is the proper practice to do this at the close of the last meeting of the term.

100⁵ OPINION 45. W. W. D. September 29, 1873.

Supplemental reports to be made by Posts. Dues of comrades reinstated.

A number of Posts have been in the habit of suspending a large number of comrades on the quarters ending March 31, June 30, and September 30, and reinstating them on the quarter ending December 31. Should not the respective Posts pay the *per capita* tax to the Department for each quarter the comrade was in arrears at the time he was reinstated and placed in good standing?

formation of the Department Commander, and shall prepare a copy, on blanks of Form C, of such consolidated return, to be forwarded by the Department Commander to the Adjutant-General on or before the twentieth day of each term. This report shall also contain a list of the names of all the Past officers of the National Encampment entitled to membership therein, reported as in good standing in the several Posts of his Department. He shall also make such supplemental reports as may be required by National Head-quarters (1).

Note 100[1] continued.

If a comrade in arrears is reinstated and placed in good standing, is not that sufficient evidence that he has paid all arrears, the number shown in good standing upon the face of the Adjutant's roll, either by muster, transfer, or reinstatement, being the basis of representation?

On principles of general equity a Post should pay Department dues for any quarter on the number of members who pay Post dues for that quarter, whether the comrades pay their Post dues at the proper time or afterwards. If the payments to the Posts are made at any time after the quarterly report of the Post has gone forward, a supplemental report should be required, or the fact of the additional collections should appear in some subsequent report.

The Regulations allow a comrade's dues to be remitted in certain circumstances, and while they are so remitted the comrade is not counted in representation or in estimating the Department tax. It does not seem to me that the Regulations require such remitted dues to be paid before the comrade is reinstated, as upon that construction the remission would only be a postponement of the time of payment, and this would be a small favor to a needy comrade. I am rather of the opinion that the Regulations permit such a person to be restored to the list of comrades in good standing when he recommences to pay his dues regularly, so that if his dues are remitted for the second and third quarters of the year, and he pays for the fourth, he may be reported in good standing on the first of January succeeding. In some exceptional cases this may give a Post an advantage over others in its representation in the Department Encampment, but it would require a two-thirds vote of the Post in twenty-five cases, on the average, to gain one representative, and this result is hardly worthy of consideration.

It can only be inferred, therefore, that a comrade who is "reinstated" from "suspended" has begun to pay his dues regularly, not that he has paid all that were in arrears. Yet as he may have been reinstated on payment of arrearages, a report should be made by the Post at some convenient time in the year, say at the time the report for the fourth quarter is forwarded, distinguishing the different classes who have been reinstated during the year, and showing for how many quarters, while they were reported suspended, such comrades have paid back dues.

I think this might be shown by a proper addition to the regular report, including the same information in regard to amounts received from comrades dropped, as well as suspended and restored.

101 By Adjutant-General.

SECTION 3. The Adjutant-General shall, on receipt of returns, note thereon the date of reception, and turn over to the Quartermaster-General and Surgeon-General the returns belonging to their respective offices. He shall consolidate the returns of the Assistant Adjutants-General, for the information of the Commander-in-Chief, and shall present a copy of such consolidated returns to the annual session of the National Encampment.

102 By Post Quartermaster.

SECTION 4. The Quartermaster of each Post shall, through the Post Commander, make a semi-annual return to the Assistant Quartermaster-General of the Department on the first days of January and July, on blanks of Form B.

103 By Assistant Quartermaster-General.

SECTION 5. These returns shall be consolidated by the Assistant Quartermaster-General within twenty days after the beginning of each term, and such consolidated return shall be forwarded by the Department Commander to the Adjutant-General, a copy thereof being retained for the information of the Department Commander, on blanks of Form D. He shall also make such supplemental reports as he may be required by National Head-quarters.

104 By Quartermaster-General.

SECTION 6. The semi-annual returns of Assistant Quartermasters-General shall be consolidated by the Quartermaster-General for the information of the Commander-in-Chief, and a copy thereof shall be presented by the Quartermaster-General to the National Encampment at its annual session.

ARTICLE 3.

DUES AND REVENUE.

105* Tax on Departments.

SECTION 1. The National Encampment, at its annual session, shall assess a *per capita* tax on each Department, not exceeding twenty-five cents per annum on each and every member in good standing therein. Such tax shall be payable in semi-annual instalments, and shall be forwarded by the Department Commander to the Quartermaster-General on or before the twentieth day of January and July. The amount of the semi-annual tax due from each Department shall be ascertained from the number of members in good standing therein, reported in the consolidated return made to the Adjutant-General on the twentieth day of the current term (1).

106* Tax on Posts.

SECTION 2. Each Department Encampment, at its session in January, shall assess a *per capita* tax on each and every Post in its jurisdiction, not exceeding one dollar per annum on each member in good standing therein. This tax shall include the tax due the National Encampment from the Department, and shall be forwarded by the Post Commander to the Assistant Quartermaster-General, in semi-annual instalments, on the first day of January and July. The amount of the semi-annual instalment due from each Post shall be determined by the number

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105[1] Taxes will now be paid by Posts and Departments semi-annually instead of quarterly. (Amendment adopted by the National Encampment, Boston, 1890.)

106[1] DECISION 7. L. W.

Per Capita Tax.—Post is liable for the quarter in which it was organized.

The Commander of a Department decided that a Post should pay the *per capita* tax due the Department for the quarter in which it was organized.

To this the Post took exceptions, claiming that the charge did not commence until the first of the ensuing quarter.

The decision of the Department Commander was sustained.

of members in good standing therein, as reported in the return of the Post Commander, made on the first day of the current term. (See Section 1, Article 2, page 172.)

107* Tax on Members.

SECTION 3. Each Post, either by its By-Laws or by a vote at the last meeting in December, may assess a *per capita* tax upon its members, payable in equal quarterly instalments, on the first day of January, April, July, and October (1–5).

See *Arrearages*, Section 3, page 187.

107[1] OPINION 91. W. C. August 24, 1878.

Assessments for burial expenses illegal (if charged as dues).

A Post By-Law states that upon the death of a comrade, and when he is buried at the expense of the Post, an assessment of one dollar shall be levied upon each member. Is such By-Law legal?

I am of opinion that, under Opinion 63, January 25, 1875, 107[3] (which governs), this By-Law is illegal. (See *Note.*)

NOTE.—A proposition was made at the Albany Encampment, 1879 (page 641, *Journal*), to amend this section by adding, "and may also assess a funeral tax, to be collected on the death of a comrade when the expense of the funeral is borne by the Post."

The Committee on Rules reported: "This is to meet the decision of the Judge-Advocate-General (Opinion 91), declaring such assessment illegal. The Committee agree with him so far as charging up such assessments as *dues* and of suspending and dropping members for non-payment; yet each Post may make laws covering beneficial features to be entered into by the comrades. If they fail to pay, and become in arrears to such a fund, they are necessarily deprived of any benefits thereunder. We deem the amendment unnecessary."

The report of the committee was adopted.

107[2] OPINION 60. W. W. D. April 18, 1874.

Per capita tax must be assessed on all alike, and, once assessed, cannot be remitted except as provided in the Rules and Regulations.

At the organization of a Post, one of the comrades who had rendered efficient services to the Grand Army was assured by the Post that he should be exempt from dues, and no dues have been demanded of him to the date of the communication, November 7, 1873. At a Post meeting, held November 7, a comrade insisted upon the enforcement of that provision of the Regu-

lations relating to the assessment of a *per capita* tax, and said that the remission to the comrade was illegal.

The Post urge that, inasmuch as the action of the Post was previous to the passage of the law, it was not intended to apply to the case, and would not affect the *status* of the comrade. The comrade was able to pay the taxes, but the Post wished to remit them as a compliment to him.

By examination of the Rules and Regulations, edition of 1868, adopted at the first National Convention, it will appear that the imposition of a tax upon each member of the Post was obligatory. Article 12, Section 1, reads as follows:

The annual dues to a Post from each member shall not be less than one dollar.

The Department in which this Post is situated was organized February 20, 1868, a little more than a month after the Regulation was adopted, and the law did not then allow exemptions or remissions except for the same causes as at present. But if it had been otherwise, any action of the Post must have been subject to the liability of being repealed or overruled by a new enactment or change of the Regulations by the National Encampment, and would have become void from the time such new Regulation went into operation.

The next year (1869) the Regulations were thoroughly revised, and Section 3, of Chapter 5, Article 3, was then adopted, in the same words which are now in force.

This section gives to each Post the power to assess a *per capita* tax upon its members; and Section 3, of Article 4, of the same chapter, permits a Post to remit the dues of a comrade who is unable, from sickness or misfortune, to pay them. The latter section has also remained unaltered to the present time.

The right to assess a tax is only granted on condition that it shall be a *per capita* one,—that is, that it shall be assessed upon each member; and it is plain that no remission of a tax once assessed can be made, except for the causes and in the manner prescribed in the section last above referred to.

If a Post may exempt one of its members from the payment of a tax at its will, it may so compliment two or more, or all but one, and so may throw upon one unfortunate comrade the whole expense of conducting it. So long as such a burden is unanimously submitted to no one complains, and practically there is no damage and no remedy; but as soon as one comrade, as in this case, calls for the enforcement of the law, it must be put in operation.

Inasmuch as the comrade has not refused to pay his tax, but the Post are in error in not demanding it, I would recommend that they begin the collection of the tax from the time when the error was discovered.

107[3] Opinion 63. W. W. D. January 25, 1875.

1. Dues applies to nothing except the annual tax.

2. Assessments compulsory; limited to the levy of an annual tax.

3. Transfer Card.—A By-Law of a Post fixing fee for each transfer card is void.

Nineteen comrades of a Post having paid their dues in advance for the current quarter, asked for transfer cards at a regular meeting of the Post. The Post By-Laws, adopted while these nineteen members were comrades of the

[Chapter 5.—Article 3.]

Post, imposed *a fee of one dollar to be paid for each transfer card.* This fee was demanded, and finally paid, under protest. The comrades became charter members of another Post, and that Post presented the case to the Judge-Advocate, who holds that the word "dues," in Chapter 2, Article 4, Section 2, of the Rules and Regulations, includes the transfer fee, because the members of the Post, by adoption of the By-Law, had contracted to pay such fee, and made it "due" to the Post from themselves or others desiring transfers, and therefore the fee was legally collected. From this decision the Post appeals to National Head-quarters.

It would, perhaps, be sufficient to say, in answer to the ruling of the Judge-Advocate, that the question has been settled by Opinion 3, of August 11, 1871, approved by the then Commander-in-Chief, and subsequently by the National Encampment, May, 1872, and promulgated in their Proceedings, page 68; but as that opinion contained no discussion of the question, it may be well to consider the reasons which support it. The word "dues" in our Regulations occurs first in the first edition adopted at Philadelphia, January, 1868, as part of the title of Article 12, as follows:

DUES AND REVENUE.

SECTION 1. The annual dues to a Post from each member shall not be less than one dollar.

SECTION 2 provides: The Department dues shall not be less than ten cents per annum upon each member upon the rolls of the Posts within the Department, etc.

SECTION 3. Departments, as soon as organized, may fix such high rates in Post and Department dues as their special necessities may require.

* * * * * * * * *

SECTION 5. The dues to the National Encampment shall be two cents per annum upon each member of the Order, etc.

In 1869 a thorough revision of the Rules and Regulations was adopted, and the subjects treated of were carefully classified.

Under the head of "Dues and Revenue," as the title of Article 3 of Chapter 5, we find the same language, which defines the term in every edition of the Regulations since that time.

The word "dues," therefore, in the universal usage of the Grand Army from the moment that it became a recognized National organization, has signified the regular annual taxes paid by comrades to their Post, by the Posts to the Department, and by the Departments to the National treasury of the Order.

It is never used in our Regulations in any other than in this restricted and technical sense. For instance, take the first section of Article 4 of the same chapter: "Any Department in arrears for reports or dues shall be deprived of all representation in the National Encampment until the same are forwarded." Can it be supposed that if a Department had forwarded its reports and the annual tax to National Head-quarters, and had not paid a bill for blanks furnished, its representatives would thereby be excluded under this section from their seats in the National Encampment? If such had been the intention, the language would have been: "Any Department indebted to the National Encampment, or whose reports have not been duly forwarded, shall," etc. In Article 4 of Chapter 2 there is nothing to indicate that the word is

used in any other sense. The first section, in providing for granting leaves of absence, says, "Provided he . . . has paid in advance all dues *for the time specified in the leave of absence.*" How can the applicant pay dues *for a future time*, unless such "dues" are the ascertainable proportionate part of a sum fixed with regard to time? I cannot think of anything to which this language can apply except the annual tax.

It is not likely that in the very next section the framers of the Regulations should have used the word in any different sense, when it would have been so easy to specify a fee as a second condition to the granting of the paper. The Judge-Advocate is in error in supposing that all powers not specifically forbidden by the Regulations may be exercised by the Posts. The intention of our Regulations is to bring membership in the Grand Army within the reach of all honorably-discharged soldiers who are not personally objectionable. The power, therefore, of a Post to make compulsory assessments upon its members is limited by Section 3 to the levy of an annual tax. This may be made sufficient, in any Post, to meet all its expenses. If it is fixed at a figure which is beyond the ability of some of the comrades, the door must be left open to them to withdraw, without fee, to some cheaper Post.

The position that a comrade, by voting for a Post By-Law which is in violation of the Rules and Regulations, may make it obligatory upon him as a contract, is subversive of all ideas of the subordination of the various organizations of the Order. Such a By-Law is void *ab initio*. If it relates to the payment of money, the comrade may fulfil it if he chooses; but the Post is forbidden to enforce it, and money paid compulsorily, under its provisions, may be recovered.

1074 DECISION 10. S. S. B.

Dues of Members. Appeals.

1. Comrades cannot be dropped because of non-payment of dues other than those prescribed by Section 3, Article 3, Chapter 5, of the Rules and Regulations.

2. A Post may appeal from and reverse the decision of the Post Commander, as well upon a question relative to the Rules and Regulations as upon questions arising upon the proper construction of the By-Laws of the Post.

3. A Post Commander may refuse to entertain a motion, believing it to be out of order; but an appeal will lie from his decision.

OPINION 10. C. H. G. June 18, 1886.

First. The By-Laws of a Post provided as follows:

The dues shall be ten cents a week and ten cents additional on the death of a comrade. All moneys due to committees by comrades shall be charged to said comrades *as dues* on the books of the Post.

Are the above By-Laws legal?

Second. Comrades have been suspended and dropped under these laws for moneys other than the *per capita* tax of ten cents per week.

Is such action by the Post legal?

If not legal, what is the present *status* of comrades who have been so dropped, and how can they be restored to membership?

The Department Commander answered that "The section of the By-Laws quoted is legal as far as dues being ten cents per week, but illegal in charging the additional ten cents per week on the death of a comrade, as dues. That the clause, that 'All moneys due to committees by comrades shall be charged to said comrades *as dues* on the books of the Post,' is illegal. Comrades cannot be dropped from the roll for any amount except such as are composed exclusively of the dues (of ten cents a week, or $5.20 per year in this case)."

The Department Commander further decided that comrades dropped under these circumstances were illegally dropped; and having been illegally dropped, were in the same position as though they had never been dropped at all. But he further held, that these comrades were in arrears for dues during the time that they had been dropped.

The following questions were also submitted:

First. Is the decision of a Post Commander on a point of law subject to appeal and reversal by the Post?

Second. Is a Post Commander justified in refusing to entertain a motion or resolution which, in his judgment, conflicts with the Rules and Regulations, and would he be right in declining to entertain an appeal to the Post from such decision?

Answering the other questions propounded, the Department Commander says:

The Rules and Regulations, under Article 7, *Appeals*, provides a remedy for all comrades who may have been unjustly or illegally dealt with, and until all the remedies provided have been exhausted, and no further steps taken to remedy the error, the comrade gives assent to the action of the Post, and voluntarily submits, and therefore suffers from his own indifference or neglect. A decision on an appeal remains in full force until reversed by competent authority; but an appeal can be carried through the different channels up to the National Encampment, and any comrade believing himself wronged, and not availing himself of the remedies provided for him, voluntarily submits to the action of the Post or Department.

To the question, "Is the decision of a Post Commander on a point of law subject to appeal and reversal by the Post?" the Department Commander answered, "If a By-Law of the Post, yes; if of the Rules and Regulations, no."

To the further question, "Is a Post Commander justified in refusing to entertain a motion or resolution which, in his judgment, conflicts with the Rules and Regulations, and would he be right in declining to entertain an appeal to the Post from such decision?" The answer is, "Yes."

I am of the opinion that the decisions of the Department Commander of the several questions propounded are correct and ought to be sustained, with the following exception: He answers the following question: "Is the decision of a Post Commander on a point of law subject to appeal and reversal by the Post?" as follows: "If a By-Law of the Post, yes; if of the Rules and Regulations, no." I can see no reason why the members of a Post may not appeal from the decision of the Commander upon a question arising upon the

ARTICLE 4.

ARREARAGES.

108* Departments.

SECTION 1. Any Department in arrears for reports or dues shall be deprived of all representation in the National Encampment until the same are forwarded (1, 2).

See *Returns and Reports*, page 172.

Note 107[4] continued.

Rules and Regulations just as well as a question arising upon the By-Laws of the Post. The provision authorizing appeals is very broad, and cannot be restricted in this way. "All members shall have the right of appeal, through the proper channels, from the acts of Posts or Post Commanders, and Department Commanders or Encampments, to the next highest authority and to the Commander-in-Chief, whose decision shall be final, unless reversed by the National Encampment." The following question put to me was decided by the single word "Yes,"—to wit: "Is a Post Commander justified in refusing to entertain a motion or resolution which, in his judgment conflicts with the Rules and Regulations, and would he be right in declining to entertain an appeal to the Post from such a decision?" I am of the opinion that this decision is wrong. The Post Commander may refuse to entertain a motion, believing it to be out of order; but I see no reason why an appeal should not lie from his ruling. It is my opinion that during the time the comrades of this Post were unlawfully dropped from the roll the Post had no right to collect dues from them. In all other respects the decision of the Department Commander is sustained.

107[5] DECISION 1. S. S. B.

Dues.—A comrade is not subject to suspension because of non-payment of so-called dues to a Relief Fund established by a By-Law of his Post. Such a payment is wholly a matter of individual conscience.

OPINION 1. C. H. G. October 24, 1885.

1st. Is a comrade obliged to pay dues to the Benefit or Relief Fund of his Post, where such a fund has been established by a By-Law of the Post?

2d. If he refuses to pay dues to the Relief Fund, can he be suspended for non-payment of dues?

The Grand Army of the Republic cannot too carefully guard the avenues by which it may become possible to heap burdens of assessments and other liabilities upon the members of an Order which aims to gather into its embrace all the men who fought to save the Union, irrespective of the present financial condition of the men. The member of a Grand Army Post has a vested right in his membership, subject only to the payment of dues and his own good conduct.

I answer both questions in the negative. (See *Note* to paragraph 107[2].)

108[1] A member of the National Council of Administration does not forfeit

office because his Department is in arrears. (See Opinion 12, *Note 90**, page 164.)

108* OPINION 8. W. W. D. September 12, 1871.

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4. Powers of Commander-in-Chief as to Department officers.

5. On refusal or neglect of Department officers to perform their duties they may be placed in arrest.

6. Commander-in-Chief may detail an Acting Commander.

If the officers of a Department of the Grand Army of the Republic neglect their duty, omit to make returns and reports as required by the Rules and Regulations, and allow their Departments to become demoralized and practically defunct, has the Commander-in-Chief authority to annul the charter of the Department and remand it to a provisional condition? . . .

3. The policy of the National Encampment, as expressed in the Rules and Regulations, seems to have been to prevent any Department getting into a demoralized condition, by the system of inspection by officers appointed by the Commander-in-Chief, and responsible, through the Inspector-General, to him alone. By this means, any delinquency on the part of Department officers would be immediately reported and, if occasioned by mistake, corrected; or if arising from intentional insubordination or carelessness, would be the occasion for trial by court-martial. One such exercise of discipline would, in most cases, be sufficient to recall the Department to its duty. The advantage of having at Head-quarters of each Department a representative of the Commander-in-Chief, in the person of an Assistant Inspector-General, is obvious, from the fact that a personal interview with the Department Commander is a mode of communication much more easy and effective than by letter or order.

4. In regard to the present power of the Commander-in-Chief, it is clear that if the Commander of any Department refuses or neglects to forward his returns, or to obey lawful orders, he may be placed in arrest—*i.e.*, suspended from his office—on charges being preferred against him. Then his duties devolve on the Senior Vice-Commander, and after a reasonable time, if his conduct is the same, he may be treated in the same way. The Junior Vice-Commander then succeeds, and if he also proves negligent or disobedient, he must likewise be suspended. Then it would, I think, be the duty of the Commander-in-Chief to detail a comrade as Acting Commander of the Department, with instructions to call immediately a meeting of the Department Council of Administration for the election of Department officers for the remainder of the current year. Until the holding of such an election the Acting Commander would hold the office.

If all the Department officers were removed or resigned, the Acting Commander could be appointed at once; but no act could be done affecting the charter of the Department, and a regular election of Department officers must be held as soon as possible. All the remedies now given by the Regulations are personal, by the prosecution and removal, after trial, of the officers who neglect their duty.

109* Posts.

SECTION 2. Any Post in arrears for returns or dues shall be excluded from all representation in the Department Encampment until the same are forwarded (1–3).

109[1] OPINION 13. W. W. D. October 12, 1871.

Private members of a Post are not responsible for neglect of the officers.

Department officer does not forfeit his office by reason of any misconduct of his Post.

Does a comrad e holding a Department office forfeit such office when the Post of which he is a member neglects its duty, and becomes practically disorganized?

If Posts are unmindful of their duties their charters should be suspended or annulled by the Department Commander and Council of Administration, but it is altogether too harsh a doctrine to hold the private members of the Post responsible for the neglect of its officers. The remedy is either against the whole body, as above, or by court-martial of the officers, the responsible parties. The *status* of the members of such Posts is recognized in Section 4, Article 4, Chapter 2, Rules and Regulations, which provides that if the members themselves are in good standing, even when the Post is disbanded, they may take transfer cards and join other Posts.

I think, therefore, that while it would not be advisable to appoint to any office a member of such a Post, yet, after the comrade is appointed, he is not rendered ineligible to retain his office by his Post lapsing into an undisciplined condition. If it should be necessary to revoke the charter of the Post, the comrade holding office should be required to connect himself with another at once.

109[2] OPINION 49. W. W. D. April 23, 1873.

1. Reports.—It is the duty of the Adjutant-General or Assistant Adjutant-General to notify Departments or Posts of the failure to receive reports.

2. If reports were forwarded, and they miscarried, sender should forward duplicate.

3. Where report has been sent but not received, representatives may be admitted.

The Rules and Regulations provide that returns and reports shall be forwarded to the Assistant Adjutant-General or the Adjutant-General, as the case may be. What is evidence before an Encampment that this is complied with? Is it sufficient evidence for representation that they were mailed and addressed to the proper receiving officer, or must the said officer testify to their receipt? or, if he certifies that they were not received, does the testimony of any subordinate officer, competent to make returns, that they were made out, signed, addressed,

and mailed to the proper person, entitle them to representatives, and is it a complete compliance with the Rules and Regulations?

It is difficult to lay down an exact rule for all cases. If a report should not be received at Head-quarters soon after it was due, it would be the duty of the Adjutant-General or Assistant Adjutant-General to notify the delinquent Department or Post that such a report had not been received; and a Post or Department Commander, who had made out and mailed a report, would have a right to suppose that it had been received, unless he should get such a notification. If a report miscarried, and the sender was notified, he should forward another copy.

At a meeting of an Encampment, the first evidence which would be presented to it, in regard to the reception of reports, would be the statement of the Adjutant-General or Assistant Adjutant-General. This, if not contradicted, would be conclusive. But if the statement should then be made that the report was actually sent and no notice had issued from Head-quarters of its non-reception, I think that the Encampment would consider that the reporting officer had done all that was required of him, with the information he possessed, and the delegates would be admitted to the Encampment, it being understood, of course, that a new copy of the missing report should be forwarded as soon as possible. All our reports are made due, by Regulations, sufficiently long before the meetings of Encampments to give time to send for new copies, if they are not forwarded when due. And to entitle a Post or Department to representation, reports may be forwarded at the last moment before the Encampment meeting, even, or sent in by the hands of the delegates.

109 [3] DECISION 34. L. F.

Where a Post has been suspended for failure to forward reports and dues, it may be reinstated on forwarding the reports and dues for which it is delinquent. If unable to do this, it must be regarded as disbanded, and, on surrender of the old, a new charter may be issued under the provisions of Chapter 2, Article 1, Section 3, Rules and Regulations.

What shall be required of Posts that have been dropped, and desire reinstatement?

OPINION 34. H. E. T. June 20, 1887.

If a Post has been suspended for simple failure to forward reports and dues, but has in fact kept up an organization, and can now supply the missing reports, I think it should be allowed to do so, thus retaining its old charter and rank; in which case it should forward dues for the entire period covered by such reports.

Where, from absence of records or any other cause, it is impossible to do this, I think the Post must be regarded as disbanded, and, on surrender of the old, a new charter may be issued under the provisions of Chapter 2, Article 1, Section 3, on payment of charter fee of ten dollars.

Where the old charter is lost or destroyed, and there is no way of determining who were the "old members petitioning therefor," I see no way but to issue a charter in the usual form, on proper application and payment of fee; the Post organizing under it to take such name and number as the Department Commander shall approve.

110* Members in Arrears.

SECTION 3. Any member of a Post who is six months in arrears in the payment of his dues (1, 2) shall be notified thereof in writing by the Post Quartermaster, and if the same are not paid within two months thereafter he may be suspended from all privileges of membership by vote of the Post, and be then so reported in the reports to Department Head-quarters, until such dues are paid (3–6).

Suspension.

While so suspended, the Post shall not be subject to the *per capita* tax on such member, and he shall not be counted in the representation of the Post in the Department Encampment, nor of the Department in the National Encampment: *Provided, however*, That when a comrade is unable, *by reason of sickness or misfortune*, to pay his dues, they may be remitted by a two-thirds vote of the members present and voting at a stated meeting of the Post.

110[1] The word "dues" applies only to the tax imposed under Section 3, Article 3, Chapter 5. (See *Notes 107*[3], page 179; *107*[4], page 181.)

110[2] DECISION 2. L. F.

A comrade suspended from membership by sentence of court-martial is not liable for dues during the period of suspension.

A comrade was sentenced by Department court-martial "to be suspended from membership in the Grand Army of the Republic and from all rights and privileges of the Order for the period of two years," and the sentence was duly approved.

1. Is said comrade chargeable with dues while undergoing said sentence and during his suspension?

2. If chargeable with dues and he refuses to pay the same after proper notification, can he be "suspended" and "dropped" for non-payment of dues while said sentence is in force?

3. If chargeable for dues during such suspension, and he refuses to pay said dues, does he become, upon the expiration of said sentence, a "dropped" member by operation of law, without any action being taken by the Post?

OPINION 2. H. E. T. September 25, 1886.

The answer to the first question must depend on the effect of the sentence and the position the party thereby occupies towards the Post.

The Rules and Regulations, among other penalties, prescribe "Suspension from membership for a specified period," and although the Encampment at

Albany in 1879, in adopting the Rules for Courts-Martial, approved the form of the sentence as given above, I think the words "from all rights and privileges of the Order" do not detract from its force, but are intended rather to state one of the incidents of suspension, that there might be no possible dispute.

I appreciate the force of the consideration, that the party's present position is the result of his own act; that no man may plead his own wrong as an excuse; and that the Post, being in the right, should be entitled to his contribution.

The better equities, however, seem to demand that one who is debarred from all participation should not be compelled to bear the burden of contributing to expenses, and that a Post should not collect from one for whom they are not responsible and who is not included in computing the Department or National *per capita* tax.

The fact that a member reported suspended for non-payment of dues is liable for them during the period of suspension has no bearing, as the incidents of the two are entirely dissimilar; nor can we apply the doctrine "once a member always a member," for it has never been adopted by our Order, but, on the contrary, express provision is made for severing membership.

I am, then, of the opinion that the words of the sentence should be taken in their usual and ordinary signification, and that a party suspended from membership by sentence of court-martial ceases to be a member of the Post during such suspension. As a Post is given a right to assess a *per capita* tax only upon its members, it follows that a tax assessed upon such a party would be invalid.

I therefore answer the first question in the negative.

This renders unnecessary any discussion of the second and third questions submitted.

110[3] Opinion 16. W. W. D. November 26, 1871.

Post may exclude suspended members from its meetings.

Has a Post the power to exclude suspended members from its meetings?

The general Regulations prescribe that a suspended member is not eligible to office, and has no vote. Any regulation adopted by a Post on the subject, not inconsistent therewith, will be valid. Such By-Law may provide that suspended comrades be debarred the privilege of attending the meetings of the Post.

110[4] Decision 27. L. F.

1. A comrade suspended for non-payment of dues, who desires to restore himself to good standing at any time before being dropped, must pay dues for the entire period up to the time of restoration.

2. After being dropped he cannot be reinstated except by vote of the Post, in which case he pays only the reinstatement fees, and the Post has no claim on him for arrears.

1. A comrade six months in arrears is suspended under Section 3, Article 4, Chapter 5, of the Rules and Regulations. Do dues of that comrade still continue to accumulate against him after suspension?

2. Do the dues of a comrade cease while he is suspended?

3. Such comrade does not reinstate himself during the year, but desires to do so just before the expiration of the two months' notice required before he can be dropped. What amount of dues should be charged against him?

4. Should more than six months' dues be required of him?

Opinion 27. H. E. T. April 15, 1887.

Though stated in different forms, there is practically but one question submitted, and that is, Do dues accumulate against a comrade after he is suspended under Section 3, Article 4, Chapter 5, of the Rules and Regulations?

I see no sufficient reason why they do not. The comrade, it is true, is deprived of privileges, through his own fault; but is not relieved from his obligations, nor has he ceased to be a member of the Post, and may at any time restore himself to good standing by simple payment of arrearages.

The language of Section 4 of the same article speaks of a member being "one year in arrears for dues;" I think this is equivalent to "in arrears for one year's dues," and that the spirit of the section is not satisfied by holding him liable only for the dues of the first six months.

The former provision for reinstatement of a dropped member required payment of dues that had accumulated to the time of being dropped; and it is now provided that when an applicant for reinstatement is rejected, the comrade may pay to the quartermaster "the amount of his dues at the time of being dropped," and may then be admitted to another Post.

The inference seems clear that dues continued until he was dropped.

Opinion 45, September 29, 1873 (Blue-Book, page 174), while not deciding this question directly, proceeds on the assumption that dues are received from comrades for quarters while they were reported suspended.

I answer the question submitted in the affirmative, and am of opinion that a comrade desiring to reinstate himself at any time before being dropped, must pay dues for the entire period up to the time of reinstatement.

In view of the suggestion made by the comrade submitting the question, that if dues thus accumulate, a *dropped* member, on being reinstated, would be obliged to pay them up to time of being dropped, I would add, that the reinstatement fee fixed by the Post has no relation to the amount which was due at the time the comrade was dropped, and if he is reinstated the Post has no claim on him for such arrearages.

1105 Decision 22. R. A. A.

Suspension of an officer for non-payment of dues creates a vacancy in such office.

A Past Post Commander so suspended, upon removal of such suspension by restoration to membership, would be entitled to the honors and privileges of a Past Post Commander.

A Commander of a Post gets in arrears for dues and is suspended, and is so reported. Does such suspension cause him to lose the honors previously gained, as well as causing his relation as Post Commander to cease?

If he should pay his dues within three months, thus restoring him to membership, does such restoration bring back the honors that he had when suspended, such as Past Post Commander and member of the Council of Administration?

[Chapter 5.—Article 4.]

111* Dropped from the Rolls.

SECTION 4. If a member of a Post shall be one year in arrears for dues, he shall be notified thereof in writing by the Post

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Note 110[5] continued.

OPINION 22. D. R. A. 1890.

Suspension for non-payment of dues deprives a person from all privileges of membership in the Grand Army of the Republic. (Section 3, Article 4, Chapter 5, Rules and Regulations.)

One of these privileges is the right to hold office in the Order. The only prerequisite to eligibility to office, specified in the Rules and Regulations, is that the member must be of good standing. A suspended member is not in good standing, and therefore is not eligible to office. There is, however, quite a distinction between holding an office and being entitled to certain honors and privileges, by reason of having at some previous period held an office and faithfully discharged its duties. The one imposes present duties to be performed, while the other, as a reward for services completed, grants honors and privileges that may be enjoyed. Suspension for non-payment of dues only operates to deprive the member from the enjoyment of such honors and privileges, the same as other privileges of membership, during the term of such suspension. I am therefore of opinion that suspension for non-payment of dues deposes a member from any office in the Grand Army of the Republic that he may hold at the time of such suspension, and creates a vacancy in such office. I am also of opinion that a Past Post Commander, suspended for non-payment of dues, upon the removal of such suspension, and the restoration to membership in his Post, would still be entitled to the honors and privileges of a Past Post Commander.

110[6] DECISION 23. R. A. A.

The Quartermaster's books are only prima facie evidence of the correctness of the accounts of the Post with its members, and their correctness, when impeached, may be shown by other evidence.

The Quartermaster's books being unreliable as to the condition of individual accounts, is there any other evidence admissible on which a comrade can be legally dropped, when he will make affidavit that all dues have been paid?

OPINION 23. D. R. A. 1890.

The Quartermaster's books are only *prima facie* evidence of the correctness of the accounts of the Post with its members; and their correctness, when impeached, may be shown by other evidence. When the Quartermaster's books show that a member of a Post is in arrears for dues, and such member claims that the books are incorrect, and that he has paid his dues, it is the duty of the Post, before taking any action to either suspend or drop such member, to institute an inquiry into the correctness of the Quartermaster's account with such member, and it is competent upon such inquiry to show by other evidence than the books themselves that the Quartermaster's accounts are not correct.

111[1] An important change was made in this section by the National Encampment at Boston, 1890, in striking out the provision that a member dropped

Quartermaster, and on failure for two months thereafter to pay such dues, he may by a vote of the Post be dropped from the rolls, unless relieved from such payment, and can be reinstated in any Post upon application duly made, referred, and reported upon, and on payment of the amount due his former Post at the date of his being dropped, which shall be forwarded by the Post receiving him. If the Post of such dropped member has been disbanded, the amount of such arrearages shall be retained by the Post electing him (1–9).

SECTION 5. The provisions of Sections 3 and 4 of this article shall not apply to any comrade in the service of the United States, and on duty at a distance from the Post of which he is a member (9).

Note 111[1] continued.

from the rolls could only be reinstated in the Order through the Post which dropped him.

Under this amendment a dropped member may now apply to any Post, but the arrearages to his former Post must be collected and forwarded to that Post. This amendment renders inoperative a number of Decisions previously rendered on this point, and they are now omitted from the BLUE-BOOK.

111[2] OPINION 26. W. W. D. February 24, 1872.

Reinstatement.—Too late to reinstate a member after he has died. A member who has been dropped is no longer a member, and the Post has no power to remit his dues. Post funds cannot be used to reinstate a member.

Can a Post reinstate, without payment of dues, a comrade who had been dropped for arrearages, and who died after his name had been dropped?

The power given to Posts in Chapter 5, Article 4, Section 3, to remit the dues of a comrade six months in arrears, should be exercised, if at all, when the case is reported. It must be done by the Post of which he "is a member." It is too late after his connection with the Post is severed by death.

Section 4 confers an entirely different power,—that of restoring to membership a former comrade who had been dropped for non-payment of dues for a year. When a comrade is dropped in accordance with Section 4, he ceases to be a member, and the Post of which he was a member has no longer any power to remit his dues. They must be paid either by himself or by some other person, as a condition precedent to his readmission. I should consider the appropriation of Post funds to such a purpose an unconstitutional use of its money. The present case would be decided by the fact that no dead person could be admitted to a Post, either as a recruit or by being restored to membership.

[Chapter 5.—Article 4.]

111[3] Opinion 142. J. R. C. October 16, 1882.

Ballot for reinstatement should be by ball ballot.

The Post Commander, after the committee had reported on the application of a candidate for reinstatement, ordered a *written ballot.* From this order an appeal was taken. Should the ballot have been by ball or written ballot?

There can be but one mode of balloting for candidates or applicants for admission or readmission to the Grand Army of the Republic. That is by *ball* ballot. (See Chapter 2, Article 2, Section 4, Rules and Regulations.) The entire subject is plainly worded in Articles 2 and 3 of this chapter (2) and in Section 4, Article 4, Chapter 5. The voting there referred to applies to the election of a comrade on *readmission,* and the ballot referred to can only be interpreted, by Chapter 2, Article 2, Section 4, a ball ballot.

111[4] Decision 18. R. A. A.

In no case can a member be either suspended or dropped except by a vote of the Post.

First. Must a comrade who is one year in arrears for dues be first suspended before he can be dropped?

Second. Can the notice required by Section 3, Article 4, Chapter 5, be waived by the Post or Quartermaster?

Third. Can the vote required by that section be waived or neglected?

Opinion 18. D. R. A. 1890.

To all the interrogatories I answer no. When a member is six months in arrears for dues it is the duty of the Quartermaster to notify him, and if he does not pay within two months he may be suspended. If, however, no action is taken by the Post, and his dues remain unpaid for a year, it is then made the duty of the Quartermaster to again notify him in writing, and if he fails to pay within two months thereafter he may be dropped from the rolls. In no case, however, can a member be either suspended or dropped except by a vote of the Post.

111[5] Decision 11. L. F.

One illegally elected cannot recover dues paid to the Post.

A comrade who had been dropped for non-payment of dues, by his Post in Pennsylvania, applied for admission to a Post in Virginia, without having been reinstated, although his old Post still existed.

He stated at the time, that he had made previous application to the Post in Pennsylvania, but the Post in Virginia either failing to make proper inquiry or wilfully attempting an illegal act, received him, and treated him as a member for about three years. At the end of this period he was dropped from the rolls as having been illegally admitted.

The correctness of thus dropping him was not questioned, but the comrade

claimed to recover back from the Post the amount he had paid as dues during the three years he had been borne on the rolls, which being denied, he endeavored to secure such action by an application to the Department Commander, who referred the question to the Commander-in-Chief.

Opinion 11. H. E. T. December 31, 1886.

There are two familiar principles of law which seem to govern this case.

1. Ignorance of law is no excuse; and,

2. Where one of two parties engaged in an illegal transaction attempts to recover from the other, the court will leave the parties where it finds them. Applying these, it appears that the comrade having been mustered at a time when he was ineligible under a law which he should have known, and having made voluntary payments, cannot now recover back the money from the Post.

The fact that during the time covered by the payments he was treated as a member of the Post, and had the benefit of his apparent membership, would also seem a good reason why the Post should retain the money.

111[6] Opinion 77. W. C. August 29, 1877.

Dropped members cannot be regarded as dishonorably-discharged members.

Dishonorably-discharged members are such as have been convicted and sentenced by court-martial.

Certain members were dropped from the rolls for non-payment of dues. Can such members be regarded as "dishonorably discharged"?

Section 3, Article 4, Chapter 5, of the Rules and Regulations, 1877, is clear and explicit, that any member in arrears in the payment of his dues is to be reported only as "suspended." And Section 4 of the same article is equally clear and explicit, that any member in arrears for a year shall be "dropped from the rolls," and of course so reported.

In my judgment only those members convicted (and sentenced) under a court-martial of one of the five offences named in Section 1, Article 6, of said chapter, can be regarded or reported as "dishonorably discharged;" therefore I am of opinion that comrades dropped from the rolls for non-payment of dues cannot be regarded or reported as "dishonorably discharged."

111[7] Decision 30. J. P. R.

One dropped from the rolls is no longer a member.

(*a*) A comrade who has been dropped from the rolls for non-payment of dues is no longer a member of the Order, and is therefore not subject to discipline as such. (*b*) The fact that charges are pending against a comrade does not preclude the Post from dropping him from the rolls for non-payment of dues, in a case where such dropping would otherwise be proper.

111[8] Decision 4. J. S. K. November 7, 1884.

Post has no jurisdiction over a comrade dropped from the rolls, except for reinstatement.

ARTICLE 5.

INSPECTION.

112 Of Posts.

SECTION 1. There shall be a thorough inspection of each Post every year, to be made by the Assistant Inspector, Department officer, or other comrade assigned to such duty, the report of the same to be made to the Inspector of the Department immediately thereafter.

Such additional inspection shall be made as the Commander may deem necessary, on the recommendation of the Inspector, or when directed by the Inspector-General.

The Inspector shall consolidate the reports of his assistants for the information of the Commander, and shall furnish copies of such consolidated reports to the Inspector-General.

Of Departments.

SECTION 2. The Commander of each Department shall divide his Department into such number of Inspection Districts as he deems necessary, changing the same at his discretion.

He shall, on the nomination of the Inspector, appoint comrades as Assistant Inspectors, who shall be assigned to duty and act as such during the pleasure of the Commander.

Assistant Inspectors-General.

SECTION 3. Assistant Inspectors-General shall be appointed by the Commander-in-Chief, on the nomination of the Inspector-General. They shall make inspections of the various staff offi-

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Note 111[8] continued.

A comrade who has been dropped from the rolls of a Post, on account of non-payment of dues for a year or more, is no longer a member of the Grand Army of the Republic, and the Post of which he was a member has no jurisdiction over him for any purpose, except to receive his application for reinstatement.

111[9] The term "service," under which comrades employed in the pension or other civil departments of the government, and on duty at a distance from their Posts, have claimed exemption from the provisions of this section for non-payment of dues, was defined by resolution of the National Encampment, 1887, to apply only to comrades in the military, naval, or marine service, and on duty at a distance from the Posts of which they are members.

cers of the Departments whenever required, and shall report the result of the same immediately to the Inspector-General, and shall perform such other duties as may be required of them by the Commander-in-Chief or Inspector-General.

Inspector-General.*

SECTION 4. The Inspector-General shall prescribe the form of blanks to be used for the inspection of Posts, and with the approval of the Commander-in-Chief may give such special instructions in reference to inspections as may be deemed necessary. He shall prepare an abstract of the reports received from Departments, for the information of the Commander-in-Chief and present a report to the National Encampment.

Records subject to Inspection.

SECTION 5. All books, papers, accounts, records, and proceedings pertaining to the Grand Army of the Republic shall be subject to inspection at all times by the several inspecting officers in their respective districts.

ARTICLE 6.

113 DISCIPLINE.

Printed in connection with Form for Courts-Martial, page 215.

ARTICLE 7.

BONDS.

114* Post Quartermaster and Trustees.

SECTION 1. Every Quartermaster shall give bonds in a sum to be named by the Post, with sufficient sureties, for the faithful discharge of his duties.

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* Reports to be made on Form H for Post inspections; Form E for the return of Department Inspector.

All Inspections are subject to such orders as to forms and reports as may be given by the Inspector-General under instructions of the Commander-in-Chief.

See form for the official reception of inspecting (or other) officers in SERVICE-BOOK.

114[1] A Quartermaster cannot be installed until he has executed and delivered to the Commander a bond for the faithful discharge of his duties.—*Installation Service.*

[Chapter 5.—Article 8.]

Trustees of Posts or Relief Funds may be required by the Post to give bonds in an amount to be fixed by the Post for the faithful discharge of the duties of their office.

Assistant Quartermaster-General.

SECTION 2. Every Assistant Quartermaster-General shall give bonds in a sum to be named by the Council of Administration, with sufficient sureties, for the faithful discharge of his trust.

Quartermaster-General.

SECTION 3. The Quartermaster-General shall give bonds in the sum of five thousand dollars, with sufficient sureties, for the faithful discharge of his trust.

Adjutant-General.

SECTION 4. The Adjutant-General shall give bonds in the sum of one thousand dollars, with sufficient sureties, for the faithful discharge of his trust.

How held.

SECTION 5. The bonds of the above-named officers shall be approved and held by their respective commanding officers as trustees for their several commands.

ARTICLE 8.

115* TITLES OF ADDRESS.

In the meetings of the various bodies of the Grand Army of the Republic, members shall be addressed only as "Comrades," excepting when holding office, when they shall be addressed by the title of the office which they hold in the Grand Army of the Republic (1).

Note 114[1] continued.

As the larger number of Posts are unincorporated, it is important to know what the law is in each State in relation to bonds given by officers of unincorporated associations. This question should be carefully inquired into by the Judge-Advocate in each Department, and a proper form be then printed and issued for the use of Posts.

115[1] Posts composed of members who served in the naval or marine service of the United States may use the term "Shipmates," instead of Comrades, where they deem the same appropriate.—*Resolution National Encampment*, St. Louis, 1887.

ARTICLE 9.

UNIFORM—BADGES.

116 Uniform.

SECTION 1. Departments may adopt a uniform for their own members. Where no uniform is prescribed by a Department, each Post may adopt one.

117* Membership Badge.

SECTION 2. The membership badge of the Grand Army of the Republic shall be in form and material that adopted at the special meeting of the National Encampment in New York, October 27, 1869 (1), with the additional device prescribed and adopted by the National Encampment in San Francisco, August 4, 1886 (2), and no other shall be worn as the badge of the Grand Army, except that prescribed for officers in Section 3, and for past officers in Section 4, and hereafter no membership badge shall be manufactured or issued, except in conformity with the above (4–6): *Provided, however,* That the badges heretofore issued under the authority of the National Encampment may be worn.—*Notes.* (*Cuts Nos. 1–5.*)

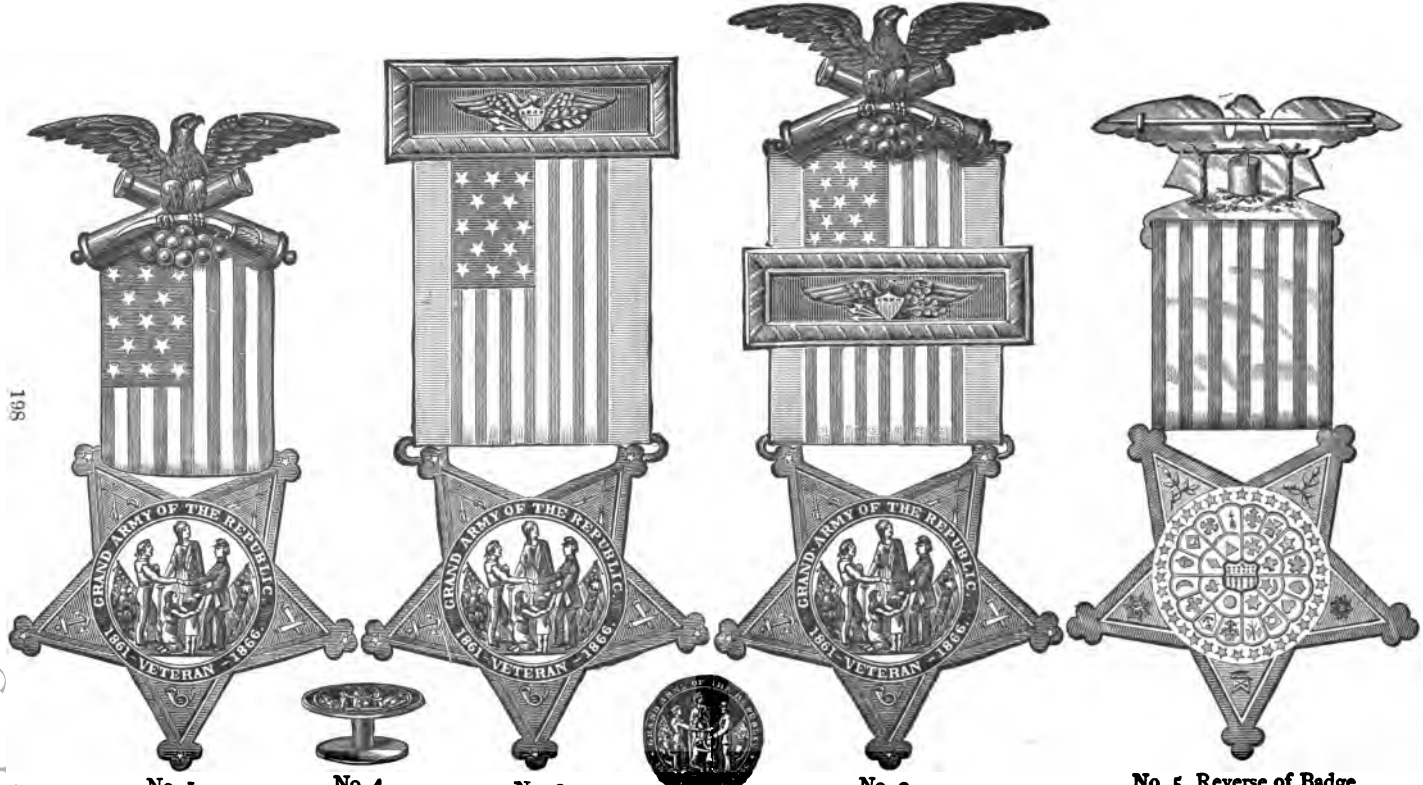
General provisions relative to the adoption of form of badge, changes therein, and rules for the sale of badges and buttons.

117 [1] *Resolved,* That the design of the badge submitted by the National Council of Administration be adopted, and that the badges shall be cast from bronze composed of cannon captured during the late rebellion.

117 [2] The Encampment at Portland, 1885, directed a change on the reverse of the badge by adding to the clasp the device of a camp-kettle and fire, and on the star by adding the corps marks for Sheridan's Cavalry, Wilson's Cavalry, and Hancock's Veteran Corps. These were formally adopted by the National Encampment at San Francisco, 1886, and the whole badge, as altered, is protected by letters-patent for the sole use of the Grand Army of the Republic.

117 [3] The following resolution was adopted by the National Encampment at Milwaukee, 1889:

Resolved, That the anchor be permitted to be worn by men who served in the navy, below the rank strap over the flag, thereby designating the branch of service in which they were.



No. 1. No. 4. No. 2. No. 3. No. 5, Reverse of Badge.

117[4] The following resolutions were adopted relative to the purchase or sale of badges:

Resolved, That the purchase of badges or other Grand Army of the Republic supplies by any Post or Post officers from any other person or source than through the regular channels from Department or National Head-quarters shall be a proper cause for the suspension of said Post, and for revoking the charter.

Resolved, That the Commander-in-Chief is hereby requested to direct charges to be preferred and prosecuted to trial against any Grand Army of the Republic member who manufactures or sells official or membership badges without the consent of the National Council of Administration, and that the Commander-in-Chief be directed to issue an order embodying these resolutions.

117[5] Resolution of National Encampment, page 147 (*Journal*, 1884):

Resolved, That the giving of the regulation badge to persons unauthorized to wear it is impolitic, productive of evil to the Order, and is emphatically condemned.

117[6] *The Grand Army Button.*—The following resolution was adopted by the Encampment at Minneapolis. (See page 139, *Journal*, 1884):

Resolved, That the Council of Administration shall ask for designs for a small pin or button, that may be worn and acknowledged as a mark of membership, and when a design is offered that meets its approval, the same shall be promulgated in orders, and become a recognized badge under such regulations as may be deemed advisable by the Commander-in-Chief and Council of Administration.

In accordance therewith the Council adopted the design for a button shown in *Cut No. 4*, to be worn in the upper button-hole on left lapel of coat.

The following resolution was adopted by the National Encampment, 1884 (*Journal*, page 182):

Resolved, That the restrictions governing the sale of the regulation Grand Army badge shall apply to the sale of the miniature badge suggested by the resolution of Comrade Hazzard, of Pennsylvania, and the same shall be copyrighted in the name of the Grand Army of the Republic.

117[7] Posts are required to present each recruit with a badge, the cost thereof being added to the muster-in fee. (Amendment to Section 8, Article 2, Chapter 2, at Minneapolis Encampment, 1884.)

117[8] *Use of badge or initials G. A. R. for business purposes.*

The National Encampment at St. Louis adopted the following resolution:

Resolved, That the members of the Grand Army of the Republic are strictly forbidden to use the badge of the Order or the letters G. A. R. as a sign or advertisement for any private business whatsoever.

[Chapter 5.—Article 9.]

1179 DECISION 35. L. F.

A comrade may not advertise his place of business as "Head-quarters G. A. R."

A comrade uses as a sign for his saloon the membership badge of our Order, accompanied with the words, "Head-quarters G. A. R." Has he a right to so use those words?

OPINION 35. H. E. T. June 29, 1887.

The question on which a former Opinion was rendered was by its terms limited to the use of the membership badge; the one now submitted turns on the right of a comrade to advertise his saloon as "Head-quarters G. A. R."

The use of the badge and letters G. A. R. is in many cases objectionable, though not, in my opinion, illegal; but when a comrade adds thereto the false and misleading statement that his place is the Head-quarters of the G. A. R., I think he is going too far, and is appropriating to his private uses and ends that to which he has no right.

The words "Head-quarters G. A. R." have their own well-known significance, and their unauthorized use is liable to produce trouble, may bring disgrace upon the Order, and can well be objected to as prejudicial to good order and discipline.

I am of opinion that the comrade should be required to desist from such use.

11710 DECISION 3. W. W.

No right exists for the use of the insignia of the Grand Army of the Republic or the letters G. A. R. in trade-marks or as an advertising device.

Is there any statute forbidding the use of the insignia or letters G. A. R. in trade-marks or as an advertising device by persons not members of the Grand Army of the Republic?

OPINION 3. J. B. J. November 12, 1888.

I have not been able to find any statute of the United States on the subject. There are, however, in some of the States of the Union, statutes forbidding such use of these letters. At the National Encampment, held at St. Louis, a resolution was adopted forbidding any member of the Order the use of these initials for advertising purposes (1178). The impropriety of any member of the Order or of any other person using them in a trade-mark or to advertise his business is apparent. In my judgment no such right exists, and if attempted could be restrained on proper application to the courts.

11711 OPINION 139. J. R. C. September, 1882.

Badge is personal property, but should only be worn by actual members of the Grand Army of the Republic.

Has an honorably-discharged member of the Grand Army of the Republic the right to wear the badge of the Order at any time after his discharge?

118* Badge of Office.

SECTION 3. The badge designating official position in the Grand Army of the Republic, adopted at the meeting of the National Encampment, held at New Haven, May 14 and 15, 1873, and as amended by the National Encampment at St. Louis, September 30, 1887, may be worn by all National, Department, and Post officers in the Grand Army of the Republic when on duty or on occasion of ceremony, and no shoulder-straps or other badge shall be worn to designate official position in the Grand Army of the Republic. (*Cut No. 2.*)

119* Badge of Past Officers.

SECTION 4. Past officers may wear the strap of the official badge proper for the highest position they have held in the Grand Army, with a clasp upon the ribbon proper for such position, beneath the bronze eagle of the membership badge, to which the whole shall be pendent. (*Cut No. 3.*)

Note 117[11] continued.

The badge of the Grand Army of the Republic is strictly a *membership* badge *only*, and denotes that the party wearing it is an actual member, and properly should be worn only by active members of the Order. However, the badge is the personal property of the comrade, and if he be honorably discharged, or otherwise ceases to be an active member, and, having a badge, wears it, I know of no way to prevent it.*

* This is now governed by law in a number of States, making the unlawful wearing of the Grand Army Badge a misdemeanor.

117[12] DECISION 16. L. F.

The membership badge is personal property, and a comrade taking an honorable discharge cannot be compelled to surrender it to the Post.

When a comrade receives an honorable discharge from a Post, shall he surrender his Grand Army of the Republic badge?

OPINION 16. H. E. T. February 15, 1887.

The badge is the personal property of the comrade, and if he desires to retain it I am of opinion that he has the right, and cannot be compelled to surrender it to the Post.

See also Opinion 139, September, 1882 (117[11]).

118[1], 119[1] *Official Badges.*

The proper size and form of badges are shown in the accompanying cuts and description. An officer on duty should wear *only* the badge proper for

[Chapter 5.—Article 9.]

Official Badges.

The following description of the official badge is from the report of the committee, and as adopted by the National Encampment at New Haven, 1873, and General Orders subsequent:

That this official badge consist of a miniature strap and ribbon, to which shall be pendent the bronze star of the membership badge; that this strap be one and one-half inches in length, one-half inch in width, enamelled, with a border one-eighth of an inch in width, of gold or gilt, and on it be the insignia of official position in the Grand Army of the Republic, making use of the familiar star, eagle, leaf, and bar of the old service; that the field in enamel be, for the National and Department officers, black; for Post officers, dark blue.

That the ribbon be one and one-half inches in length in the clear, and one and one-fourth inches in width, to be composed of the flag as on membership badges, with a border of one-quarter of an inch on each side; the borders to be in color, for national officers, buff; for Department officers, red (cherry); and for Post officers, light blue.

That this badge be worn conspicuously on the left breast of the coat.

That, to distinguish the different Departments, a miniature shield in gold or gilt, with the coat of arms of the State, may be worn pendent to the strap.

Note 118[1], 119[1] continued.

such position (Figure 2). He is not authorized to wear the badge of any other office held by him than the one prescribed for the position in which he is serving.

Past officers may wear the strap and ribbon of the badge proper for the *highest position* held by them in the Grand Army, beneath the bronze eagle of the membership badge (Figure 3). The wearing of additional straps or ribbons for other offices in which they have served is not in accordance with the Rules and Regulations, and has been forbidden in General Orders.

Official badges are provided with a swivel to the star, so that the ribbon may be kept of proper width.

Officers or comrades desiring to replace the ribbon for badges should obtain the same from Head-quarters, to insure uniformity in color.

Post officers should see that in any printing where a *fac-simile* of the Badge is used, it shall be in exact accord with the form prescribed. Official electrotypes of the membership badge, in three sizes, can be had from Department Head-quarters. R. B. B.

The insignia of rank upon the straps are as follows:

For Commander-in-Chief, four silver stars.

For Senior Vice-Commander-in-Chief, three silver stars.

For Junior Vice-Commander-in-Chief, Department Commanders, two silver stars.

For the official staff of the Commander-in-Chief, Surgeon-General, Provisional Department Commanders, Senior Vice-Department Commanders, one silver star.

For Junior Vice-Department Commanders, one gilt star.

For the official staff of the Department Commander, Medical Directors, Aides-de-Camp, and Assistant Adjutant-General to the Commander-in-Chief, Post Commanders, silver eagle.

For Senior Vice-Post Commanders, Assistant Inspectors-General, Aides-de-Camp to Department Commanders, silver leaf.

For Junior Vice-Post Commanders, Assistant Inspectors, Post Surgeons, gilt leaf.

For members of Council of Administration, silver letter "C."

For Chaplain-in-Chief, silver star and cross.

For Department Chaplains, large silver cross.

For Post Chaplains, small silver cross.

For Post Officers of the Day, two gilt bars.

For Post Adjutants and Quartermaster, one gilt bar.

For Officers of the Guard, vacant field.

For Past Officers, see Section 4, above.

Department and Post Flags.

In order to secure uniformity in the colors carried by Posts and Departments on parade, Commander-in-Chief W. G. Veazey has made the following suggestions by circular to the Grand Army of the Republic:

For Head-quarters of Departments.—A silk flag, color red (cherry), the same shade as the edge of the badge ribbon worn by Department officers; the insignia thereon to be the membership badge of the Order, with the regular plain flag-ribbon and eagle, having above the eagle two silver stars, and in gilt letters above the stars the words *Department of*, and below the badge the name of the Department and the letters G. A. R., or the words they signify; fringe of bullion or knotted yellow silk; cords and tassels of red and white silk intermixed; size of color, if a flag, about four feet six inches fly and four feet on the pike, which, including spear-head or eagle and ferrule, should be nine feet six inches long. If a banner is carried instead of a flag, the size is left optional, but the color and general effect should be as above described. The coat of arms of the State may be upon one side of the flag or banner, if preferred, instead of the badge, but the lettering should be alike on both sides.

For Posts.—The same flag, except that the color will be blue, the same shade or darker than the edge of the badge-ribbon worn by Post officers; the insignia upon the same to be the membership badge with the regular plain flag-ribbon and eagle, having above it the name, number, and location of the Post, and below it the name of the Department and the letters G. A. R., or the words they signify, in gilt letters; both sides of the color alike, unless the

ARTICLE 10.

120* PROVISIONAL DEPARTMENTS.

SECTION 1. In States or Territories where the Grand Army of the Republic is not established, the Commander-in-Chief may appoint, and cause to be mustered in, a Provisional Commander, who shall appoint, with the approval of the Commander-in-Chief, from comrades of the Grand Army of the Republic, a Senior and Junior Vice-Commander, an Assistant Adjutant-General, and an Assistant Quartermaster-General. He may appoint four Aides-

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Department and Post Flags continued.

coat of arms of the State be preferred for one side instead of the badge; fringe of bullion or knotted yellow silk; cords and tassels blue and white intermixed; size of Post colors to be six feet six inches fly by six feet on the pike, which, including spear-head and ferrule, is to be nine feet ten inches long.

The regular national United States flag, carried by Posts, having upon the red stripes, in gold letters, the name, number, and location of the Post, and the name of the Department, should conform in size and trimming to the blue flag above described; the union, or field of blue, to be thirty-one inches in length and extending to the lower edge of the fourth red stripe from the top.

A Post may very properly carry both the blue flag and the "stars and stripes," but if only one is selected the latter is to be preferred.

All colors should be provided with proper carrying belts and water-proof cases to protect them when furled.

All small "markers" or flags for Posts will be blue in color.

For Head-quarters Grand Army of the Republic.—The Head-quarters of the Grand Army of the Republic will be designated by a flag similar to that prescribed for Departments, except that the color will be buff, the insignia thereon four silver stars above the badge and the words *Head-quarters Grand Army of the Republic;* the coat of arms of the United States to be upon one side in place of the badge; cords and tassels of buff, red, and blue silk intermixed.

These suggestions are not intended to affect any colors now in use, but only to apply to those hereafter procured, that at future parades, eventually, the character of an organization or Head-quarters may be readily determined by its colors.

120[1] OPINION 14. W. W. D. October 19, 1871.

1. Inspectors.—A Provisional Department Commander cannot appoint Department Inspectors.

2. Inspector-General may nominate Assistants.

Can a Provisional Department Commander appoint a Department Inspector?

1. I think that Article 10, of Chapter 5, Rules and Regulations, limits the staff of a Provisional Commander to the officers there named. It seems to be contemplated that the duties of inspection should be performed by the Aides, four of whom would be able to attend to any number of Posts less than ten.

de-Camp. The Provisional Commander, the Senior and Junior Vice-Commander, the Assistant Adjutant-General, the Assistant Quartermaster-General, and five comrades selected by the Provisional Commander shall constitute the Council of Administration. The officers thus appointed shall have, for the time being, all the powers and duties of permanent Department officers, and make returns in accordance with Article 2 of this chapter.

SECTION 2. When six Posts are organized in any Provisional Department, the Commander-in-Chief shall order a meeting of a Department Encampment. When so assembled, it shall effect a permanent Department organization.

Note 120[1] continued.

2. The Inspector-General may nominate as many Assistants as he thinks necessary, one for each Provisional Department, as well as for regularly-constituted Departments, if he chooses.

120[2] OPINION 129. G. B. S. January 28, 1882.

A Provisional Department Commander not entitled to a seat in a Department Encampment.

Is a comrade entitled to a seat in a Department Encampment by virtue of having been a Provisional Department Commander?

Section 1, Article 10, Chapter 5, Rules and Regulations, provides for the appointment of officers of Provisional Departments, and the last paragraph contains these words: "The officers thus appointed shall have, for the time being, all the powers and duties of permanent Department officers."

It is the evident intention of this paragraph that when the Provisional Department becomes merged in the permanent Department, the powers and duties of all appointed officers shall cease; consequently the Provisional Commander cannot be recognized by the new Department Encampment, or permitted to enjoy the privileges of a Past Commander. It is also evident from the language of paragraph 1, Article 2, Chapter 3, that only Past Department Commanders who have been elected for a term, or to fill a vacancy, are entitled to membership in a Department Encampment, and as the Rules and Regulations are very explicit in determining what shall constitute membership in such Encampments, and Past Provisional Commanders are not specially provided for, I can see no reason why they should be admitted.

I therefore answer the question in the negative.

120[3] OPINION 10. W. W. D. September 15, 1871.

Provisional Department.—Commander-in-Chief has no power to change a permanent Department to a Provisional Department.

The Commander-in Chief having power to order the permanent organization of a Department when it comprises ten Posts, can he not place it again in a provisional condition when the number of Posts becomes less than ten?

I answer No. It must be expected that our organization, composed of men past their early youth, will gradually diminish in numbers until it is finally extinguished by the death of all who have joined it. This cause, it is evident, will reduce one Department after another to a less number of Posts than ten, and yet it would be desirable, I think, that the few survivors of our glorious army should keep up the regular organization to the last. At any rate, the emergency is one which sooner or later will arrive in every Department, and the subject of providing for it may be left for the future. Any decision of the question now, in view of the fact that it must come before the National Encampment by and by, would be premature. And certainly any decision with reference to one Department, without considering how it will apply in the future to all, would be injudicious.

120 OPINION 27. W. W. D. March 1, 1872.

1. A Provisional Department can be organized into a permanent Department on the order of the Commander-in-Chief.

2. Where the Provisional Commander assumes to act and to organize the permanent Department without the order of the Commander-in-Chief, his acts are illegal and void.

3. The Commander-in-Chief may issue an order, however, and rectify the act of the Department Commander. He has discretionary power in such cases.

The Commander of a Provisional Department having organized ten Posts therein, requested of the Commander-in-Chief information as to "the manner of procedure necessary to secure" for the Provisional Department "recognition as a Department."

1. In reply he was informed: "The permanent organization of a Department is by order of the Commander-in-Chief, calling a Department Encampment. . . . An order will at once be issued upon your naming the time and place for the assembly of the Department Encampment, and forwarding the charter fee of twenty dollars, required by the Regulations. This matter will receive prompt attention at National Head-quarters in order that there may be no delay in the organization."

2. In reply to the next letter, saying, "Please hurry up charter," he was informed that "the order for Department Encampment cannot be issued before a full and complete report is received from your Department." This condition was rendered necessary by the failure of the Provisional Commander to forward reports and dues for the quarter next preceding, which had meanwhile become due.

Nothing further was received until the receipt of a communication informing the Commander-in-Chief that the Department had been permanently organized without orders from the Commander-in-Chief.

Was the action of the Provisional Commander in accordance with the Rules and Regulations? Is it valid? What is the power and duty of the Commander-in-Chief in the matter, according to the Rules and Regulations?

3. The mode of organizing a permanent Department is prescribed in the Regulations, Chapter 5, Article 10, Section 2. The order for organization

ARTICLE 11.

121* POLITICS.

No officer or comrade of the Grand Army of the Republic shall in any manner use this organization for partisan purposes, and no discussion of partisan questions shall be permitted at any of its meetings, nor shall any nomination for political office be made.

Note 120⁴ continued.

must be issued by the Commander-in-Chief. The action of the Provisional Commander is, therefore, illegal and void.

The further question, "What is the power and duty of the Commander-in-Chief in the matter?" is not so easily answered. He has the power to declare the law, and to remove and court-martial the Provisional Commander who has violated it; but whether he should exercise that power in the present instance depends upon how such action will affect the interests of the Grand Army. If the act of the Department Commander was a perverse and arbitrary exercise of authority not delegated to him, he should be punished, and his action declared void; but if it appears that he took the letter from Head-quarters as approving the idea of the organization, and innocently went beyond his power, the Commander-in-Chief may ratify the action now. Either course will be legal, and the character of the Provisional Department Commander would furnish a reason for deciding one way or the other. If the Commander-in-Chief issues an order ratifying the act of the Department Commander, as he has entire discretion in the premises so to do, that will put the Department on a legal foundation.

I cannot presume to say what is best to be done in the premises. The power is clear. The expediency of using it is for the Commander-in-Chief to decide upon.

121¹ DECISION 8. R. A. A.

The action of a Post in passing a resolution, asking the President to appoint a comrade postmaster, and the Senate to confirm such, is plainly in violation of Article 11, Chapter 5, Rules and Regulations.

OPINION 8. D. R. A. 1890.

Article 11, Chapter 5, Rules and Regulations, provides: "No officer or comrade of the Grand Army of the Republic shall in any manner use this organization for partisan purposes, and no discussion of partisan questions shall be permitted. . . . *nor shall any nomination for political office be made.*"

It will not, I think, be disputed that the office of postmaster is a political office. A resolution, passed by a vote of a Post, recommending the appointment of a particular comrade to the office of Postmaster is, so far as it can be done, a nomination by the Post of such comrade for that office. I am therefore of the opinion that the action of a Post in passing a resolution asking the President to appoint a certain comrade postmaster was in violation of the Rules and Regulations.

ARTICLE 12.

122* RELIEF FUND.

A Relief Fund for the assistance of needy soldiers, sailors, and marines, and widows and orphans of deceased soldiers, sailors, and marines may (1) be established by the several Posts, and any donations to this fund shall be held sacred for such purpose.

ARTICLE 13.

123* SECRECY.

SECTION 1. The Ritual and unwritten forms of the Grand Army of the Republic, the names of persons causing the rejection of candidates for membership, or any information as to the causes or means of such rejection shall be kept secret; but any part of the proceedings of Post Encampments may be published if ordered by vote of Post, approved by the Department Encampment, Department Commander, or Commander-in-Chief, and any part of the proceedings of a Department Encampment may be published if ordered by the Encampment or Department Commander or Commander-in-Chief, and any part of the proceedings of the National Encampment may be published if ordered by the National Encampment or Commander-in-Chief.

SECTION 2. Any comrade convicted of divulging any of the private affairs of the Grand Army of the Republic, or of violating any of the provisions of this article, shall be dishonorably discharged (1–5).

122[1] As amended at Columbus, 1888, by striking out the word "shall" and inserting "may."

123[1] OPINION 41. W. W. D. December 7, 1872.

Public entertainment cannot be opened or closed according to the Ritual. Ritual to be kept secret.

Can a public entertainment given by a Post be opened and closed according to the Ritual?

Chapter 5, Article 13, Section 1, provides that the Ritual of the Grand Army shall be kept secret. The request to divulge a portion of the work cannot be granted without violating this law. (See *Note 34*[2], page 105.)

123[2] OPINION 43. W. W. D. January 7, 1873.

Obligation cannot be read to recruits before it is administered.

Can the obligation be read to recruits, consecutively, before being administered?

The resolution of the National Encampment, passed at the session of 1871, at Boston, adopting the present Ritual, prescribes that after the receipt thereof it shall be strictly conformed to in all respects in the ceremonies of opening, closing, and muster-in. No officer of the Grand Army has power to limit or alter this enactment.

123[3] OPINION 134. J. R. C. August 12, 1882.

Countersign may be communicated at another place than at a regular meeting of the Post.

Can the countersign be communicated at any place other than at a regular Post meeting, and if so, how?

In the Post, when in session, the Officer of the Day communicates the countersign by order of the Post Commander. The Post Commander, by virtue of his office, may, and should when occasion demands it, communicate the countersign to a comrade in good standing, either at a meeting of the Post or outside of the Post. Comrades are entitled to receive the countersign from the Post Commander whenever and wherever the occasion may demand their use of it. (See Opinion 141, 123[4].)

123[4] OPINION 141. J. R. C. October 16, 1882.

Countersign.—Commander may give the countersign to a comrade before the opening of the Post meeting. Post Commander must be the judge as to whether or not the occasion demands that it should be given.

Has a Commander, at a regular meeting of the Post and previous to the opening, any right to withhold the countersign from a comrade in good standing?

This query, in substance, was answered in a decision rendered August 12, 1882. The decision at that time made was on the following question: "Can the countersign be communicated at any place other than at a regular Post meeting, and if so, how? The decision was set forth in Opinion 134 (123[3]).

This query is not very greatly different from the one on which the foregoing decision was based. I have no alteration to make in the decision as then rendered, but will add that the Post Commander must be the judge as to whether or not the "occasion demands" that it should be given. For instance, if a comrade known to be in good standing is about to go on a journey before the regular meeting of his Post will take place, and makes that fact known to his Post Commander, I think the comrade is entitled to receive, and should receive, the countersign from the Post Commander. I cite this as only one instance out of many that might be given. The good sense of the Post Commander, on a statement of the facts, ought to be able to determine whether the "occasion demands" that it should be given. You cannot apply strict military

ARTICLE 14.

124* MEMORIAL DAY.

The National Encampment hereby establishes a MEMORIAL DAY (1, 2), to be observed by the members of the Grand Army of the Republic, on the thirtieth day of May, annually, in commemoration of the deeds of our fallen comrades (3). When such day occurs on Sunday, the preceding day shall be observed, except where, by legislative enactment, the succeeding day is made a legal holiday, when such day shall be observed (5).

Note 123[4] continued.

rules to the Grand Army of the Republic. This is an organization for mutual aid and for the benefit of the comrades in the nature of other benevolent and charitable organizations, and if you apply the strict military rules that governed in the army you impair the objects of the Order.

128[5] DECISION 9. R. A. A.

The "secrets" of the Grand Army of the Republic are as designated in the Opinion below.

OPINION 9. D. R. A. 1890.

The countersigns, ceremony of muster, all signs, grips, and words by which a comrade may be recognized as a member of the Order, and the proceedings of a Post or Encampment, while in secret session, not authorized to be published, constitute the "secrets" of the Grand Army of the Republic.

124[1] MEMORIAL DAY was established by Commander-in-Chief John A. Logan, by the following General Order.

At the National Encampment held in Washington, D.C., May 11, 1870, Article 14 was incorporated in the Rules and Regulations:

HEAD-QUARTERS GRAND ARMY OF THE REPUBLIC,
WASHINGTON, D.C., May 5, 1868.

General Order, No. 11.

I. The 30th day of May, 1868, is designated for the purpose of strewing with flowers or otherwise decorating the graves of comrades who died in defence of their country during the late rebellion, and whose bodies now lie in almost every city, village, and hamlet church-yard in the land. In this observance no form of ceremony is prescribed, but Posts and comrades will in their own way arrange such fitting services and testimonials of respect as circumstances may permit.

We are organized, comrades, as our Regulations tell us, for the purpose, among other things, "of preserving and strengthening those kind and fraternal feelings which have bound together the soldiers, sailors, and marines

who united to suppress the late rebellion." What can aid more to assure this result than by cherishing tenderly the memory of our heroic dead, who made their breasts a barricade between our country and its foes? Their soldier lives were the reveille of freedom to a race in chains, and their deaths the tattoo of rebellious tyranny in arms. We should guard their graves with sacred vigilance. All that the consecrated wealth and taste of the nation can add to their adornment and security is but a fitting tribute to the memory of her slain defenders. Let no wanton foot tread rudely on such hallowed grounds. Let pleasant paths invite the coming and going of reverent visitors and fond mourners. Let no vandalism of avarice or neglect, no ravages of time testify to the present or to the coming generations that we have forgotten as a people the cost of a free and undivided republic.

If other eyes grow dull and other hands slack, and other hearts cold in the solemn trust, ours shall keep it well as long as the light and warmth of life remain to us.

Let us, then, at the time appointed gather around their sacred remains and garland the passionless mounds above them with the choicest flowers of spring-time; let us raise above them the dear old flag they saved from dishonor; let us in this solemn presence renew our pledges to aid and assist those whom they have left among us, a sacred charge upon a nation's gratitude,—the soldier's and sailor's widow and orphan.

II. It is the purpose of the Commander-in-Chief to inaugurate this observance with the hope that it will be kept up from year to year while a survivor of the war remains to honor the memory of his departed comrades. He earnestly desires the public press to call attention to this Order, and lend its friendly aid in bringing it to the notice of comrades in all parts of the country in time for simultaneous compliance therewith.

III. Department Commanders will use every effort to make this Order effective.

By command of JOHN A. LOGAN, *Commander-in-Chief.*
N. P. CHIPMAN, *Adjutant-General.*

124[2] MEMORIAL DAY, NOT DECORATION DAY.—The following resolution was adopted by the National Encampment at Baltimore, 1882:

Resolved, That the Commander-in-Chief be requested to issue a General Order calling the attention of the officers and members of the Grand Army of the Republic, and of the people at large, to the fact that the proper designation of May 30 is MEMORIAL DAY, and to request that it may be always so called.

124[3] The following resolution was adopted by the National Encampment at Providence, 1877:

Inasmuch as there have been some differences of opinion as to the intent and meaning of Memorial Day, this Encampment hereby calls attention to the language of Chapter 5, Article 14, of the Rules and Regulations, and therefore, *Resolved*, That the Grand Army of the Republic seeks thus to preserve the memory of those *only* who fought in defence of the National Unity.

124[4] The following resolution was adopted by the National Encampment at Springfield, Massachusetts, June, 1878:

Resolved, That all flags hoisted on Memorial Day be at half-mast.

1245 OPINION 48. April 17, 1873.

1. Memorial Day.—Observance of Memorial Day is obligatory.

2. Private circumstances may excuse a comrade from the observance, but a Post that fails or refuses should be subjected to discipline.

3. Where a Post fails to observe the day, it is not obligatory on a member of the Post.

4. The manner or form of the observance is left to the Posts.

5. Neither the Commander-in-Chief nor the Department Commander have any authority to prescribe a plan for the observance of Memorial Day.

Is it the duty of Posts or comrades to observe Memorial Day, without any other authorization or direction than that obtained in the Rules and Regulations, Chapter 5, Article 14?

Is it discretionary with Posts and comrades whether they shall observe Memorial Day?

Would the failure of a Post to make arrangements for the observance of Memorial Day, as a Post, relieve any member of that Post from the duty of its observance?

Do the Rules and Regulations leave the method of the observance of Memorial Day, and the arrangements therefor, to the direction of Posts and comrades?

Has the Commander-in-Chief, or the Department Commander, authority to prescribe any plan of action by Posts in the arrangements for the observance of Memorial Day, or to interfere with the arrangements of any Post or comrade for its observance, either as a Post by itself, or in conjunction with other Posts, or as comrades individually?

1. I answer the first question in general terms in the affirmative. I consider that the Rules and Regulations enjoin upon every Post and comrade the duty of observing Memorial Day, and that this provision creates the duty, whether any orders are issued by Department or National authority or not.

2. The nature of the duty makes each comrade, necessarily, the judge of how he shall perform it. It is analogous to the obligation which he assumes to relieve the wants of a needy comrade, or his duty to attend the meetings of his Post. Each of these duties will be acknowledged by a comrade who feels his responsibility as a member of the Order. Yet, from the nature of the case, no Post can say what private circumstances are sufficient to excuse a member from giving charity in any particular instance, nor whether he properly waives the obligations to attend a meeting in favor of another duty which seems to him to claim the preference. In all these matters the Grand Army must leave the conduct of each comrade to his own sense of right.

In the case of a Post I think somewhat less discretion is allowable. Posts are organized, among other things, for just this purpose. The perpetuation of the memory of our fallen comrades, not only among ourselves, but in the grateful regard of the whole people, whose life they saved, by our annual processions to the resting-places of the heroic dead and the floral decorations of their urns, is one of the most prominent and beautiful objects of our Order, none the less important that it was not inaugurated till after the Grand Army had been

some time in existence. I think, therefore, that a Post which should omit this ceremonial repeatedly, or for a frivolous cause, or which should deliberately pass resolutions of contempt for the observance of it,—if such a thing can be imagined,—would be amenable to discipline by higher authority as properly as if it should fail for a long period to hold meetings, or in its capacity as a Post should commit any other act of insubordination.

3. If the Post to which any comrade belongs were to fail to make arrangements for the observance of the day, I think it would not be obligatory upon such comrade to engage in any public ceremonies in its observance. Yet, if inclination prompts him to join with some other Post, or to assemble with other comrades, or alone to visit and decorate the graves of the fallen, such voluntary service will be a becoming expression of the sentiments which the Grand Army inculcates and fosters.

4. The Rules and Regulations prescribe the observance of the day by the members of the Order. The primary organization of the members is by Posts, and, consequently, in the absence of specific orders or regulations, the duty first devolves upon each Post. It is generally the case throughout the country that there is only one Post in each town or village, and, therefore, the day has been usually observed by each Post in its own way. In cities, where there are more Posts than one, and where there are, perhaps, different cemeteries to be visited, it has been the custom, and an entirely proper one, for several Posts to unite voluntarily in this service.

5. The ordinary duties of a Department Commander relate to his Department as a whole. On occasions when the whole Department is ordered out, or assembles for any duty, he takes command. When a Post is assembled by itself, or when several Posts unite voluntarily, for the purpose of a parade, a reception, or a fair, or any such object, the Department Commander would hardly assume the direction of affairs. If one Post, or any number of Posts, were to assemble or combine for an illegal object, or one detrimental to the interests of the Order, the Department Commander would have the right, and it would be his duty, to interfere and stop such proceedings.

Clearly, whatever right a Department Commander has in his own Department the Commander-in-Chief has throughout the Order, and if the Department Commander interferes in matters relating to a Post in his jurisdiction, the Commander-in-Chief may, in his discretion, approve or revoke the order of the Department Commander.

I may add, in application of the foregoing principles to the facts which suggested the questions submitted, that no Department Encampment or Department Commander has the power to order various Posts to send delegates to a committee which shall control their action as Posts upon any public occasion, because:

1st. Such action is in effect forming a new organization, unknown to our Rules and Regulations, and giving it a command which belongs to the senior officer present.

2d. Such action, where pecuniary expense is to be incurred under direction of such committee, is giving to an unauthorized body the power to levy a special tax upon the Posts concerned.

Of course, any number of Posts, conveniently located for the purpose, may voluntarily combine for any lawful object, and may act, through a committee of their own choice, as they see fit, in securing their object, and in collecting the means for defraying the expense incurred.

ARTICLE 15.

125* ALTERATIONS AND AMENDMENTS.

The Rules and Regulations, and the Ritual of the Grand Army of the Republic, shall only be altered or amended by the National Encampment, by a two-thirds vote of the members present at a regular annual meeting thereof. But any section herein may be suspended, for the time being, at any annual meeting of the National Encampment, by a unanimous vote (1).

125[1] The following resolution was adopted by the National Encampment at Albany, 1879:

Resolved, That hereafter no amendments to the Rules and Regulations, or the Ritual, shall be considered except by unanimous consent, unless the same shall be presented to the Adjutant-General, who shall cause them to be printed at the expense of the Department presenting them, and a copy thereof to be furnished to each member of the National Encampment at least thirty days before the annual meeting.

CODE OF PROCEDURE

FOR THE GOVERNMENT OF

COURTS-MARTIAL.

ARRANGED IN ACCORDANCE WITH THE ACTION OF THE TWENTY-FOURTH ANNUAL SESSION OF THE NATIONAL ENCAMPMENT, HELD IN BOSTON, 1890.

CHAPTER V.

ARTICLE 6.

118* DISCIPLINE.

SECTION 1. Offences cognizable by the Grand Army of the Republic shall be:

1. Disloyalty to the United States of America or any other violation of the pledge given at the time of muster (1).

2. Disobedience of the Rules and Regulations or of lawful orders.

3. The commission of a scandalous offence against the laws of the land.

The offence must be a penal one.

4. Conduct unbecoming a soldier and a gentleman in his relation to the Grand Army of the Republic (2, 4).

5. Conduct prejudicial to good order and discipline.

118[1] The Ritual and unwritten forms of the Grand Army of the Republic, the names of persons causing the rejection of candidates for membership, or any information as to the causes or means of such rejection, shall be kept secret. . . .

Any comrade convicted . . . of violating any of the provisions of this article shall be *dishonorably discharged.* (Sections 1 and 2, Article 13, Chapter 5.)

The countersigns, ceremony of muster, all signs, grips, and words by which a comrade may be recognized as a member of the Order, and the proceedings of a Post or Encampment while in secret session, not authorized to be published, constitute the "secrets" of the Grand Army of the Republic. (Decision 9, R. A. A. (1235), page 210.)

[Courts-Martial.]

Penalties.

SECTION 2. Penalties shall be either:

1. Dishonorable discharge from the Grand Army of the Republic (5–9).

2. Degradation from office.

3. Suspension from membership for a specified period (10).

4. Fine; or,

5. Reprimand, at the discretion of the court, subject to the review of the proper officer.

118[2] OPINION 125. G. B. S. August 29, 1881.

Court-martial has no jurisdiction in matters that have no connection with the Grand Army of the Republic.

As members of a "Veteran Association," two comrades of the Grand Army of the Republic have become involved in a dispute over the rightful custody of certain property which belongs to the said association of veterans. In that dispute recourse has been had to the civil courts by process of attachment, and the property has now been recovered by the association.

As a result of the dispute, charges are preferred by one of the comrades against the other, charging, among other things, perjury. The comrade charged is a member of the National Encampment, and the charges are sent forward for trial by a general court-martial.

This quarrel, it seems to me, is one to be settled without appeal to the Grand Army of the Republic. It has no reference whatever to the Grand Army of the Republic, and if the crime of perjury has been committed, and a comrade has been injured thereby, the proper place to take the case is to a criminal court. If the charge can be sustained, then evidence of that conviction will be a sufficient ground for action by court-martial; until then, the Grand Army of the Republic has no right to interfere.

I recommend that the charges be dismissed.

118[3] DECISION 32. L. F.

Defrauding another in money matters not connected with Grand Army affairs will not support the charge of "Conduct unbecoming a soldier and a gentleman in his relation to the Grand Army of the Republic."

Is a comrade who cheats and defrauds another in money matters not connected with Grand Army affairs, amenable to court-martial on the charge of "Conduct unbecoming a soldier and a gentleman in his relation to the Grand Army of the Republic"?

Form of Charges.

SECTION 3. All accusations shall be made in the form of charges and specifications, and shall be tried by courts-martial. Courts-martial may be ordered by Posts or by Department Commanders, or by the Commander-in-Chief, for the trial of alleged offenders in their respective jurisdictions: *Provided*,* That Department officers designated in Section 2, Article 4, Chapter 3, other than the Commander, shall only be tried by courts ordered by the Department Commander or Commander-in-Chief, and the Department Commander and the National officers designated in Section 2, Article 4, Chapter 4, other than the Commander-in-Chief, shall only be tried by courts ordered by the Commander-in-Chief (11–20).

Note 113[3] continued.

OPINION 32. H. E. T. May 27, 1887.

The proceedings in the case are not before me, and in giving this opinion I limit myself to the consideration of the bare question, as stated.

It seems to me that our courts-martial are established, not for the settlement of private grievances between comrades, but for the punishment of some infraction of Grand Army law, or misbehavior of a comrade towards the Order or in his connection with it.

If a comrade has been overreached in a monetary transaction he has his remedy by a civil action in the courts. Where the offence involves only a matter of business probity, and has no connection with the offender's position in the Grand Army, I do not see how he can be tried on the charge stated in the question.

It is true, that if the fraud be so gross as to render the perpetrator liable to criminal conviction, and to constitute "a scandalous offence against the laws of the land," he would be amenable to court-martial, but it would be on a charge other than that now under consideration.

Opinion 125, August 29, 1881 (113[2]), appears to me to support the ground here taken.

In answer to the second question, I would say, that the Department Commander should publish in General Orders the fact that he had approved the proceedings, findings, and sentence, and that the comrade is dishonorably discharged, giving his name and Post to which he belonged, but there is no necessity of stating the offence for which he was convicted.

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* This provision was inserted by the National Encampment at Boston, 1890. Previous decisions now in conflict with this amendment, to the effect that members of a Department Encampment or of the National Encampment could not be tried by courts-martial ordered by their Posts, are therefore omitted as inoperative.

[Courts-Martial.]

How governed.

SECTION 4. Courts-martial shall be governed in their mode of proceeding and rules of evidence by the Revised United States Army Regulations and established military usage, and such orders as may be issued from Head-quarters: *Provided, however,* That in the wilful absence of the accused (21), after due notice of the time and place of trial has been given to him or left at his usual place of abode (22), the court may proceed in all respects as if he were present and had pleaded "Not guilty" (23–25).

118[4] OPINION 65. W. W. D. June 30, 1875.

"Conduct unbecoming a soldier and a gentleman"—Definition of. The Commander-in-Chief may refuse to order a court to try certain charges and specifications.

The following opinion was given upon a case submitted to me by the Commander-in-Chief, in which questions arose in regard to his powers and duties upon the receipt of certain charges and specifications against a Department Commander and another comrade, and a request had been made to him to order a court-martial for the trial of the same.

The charges are:

First. Violation of the pledge of membership.

Second. The commission of a scandalous offence against the laws of the land.

Third. Conduct unbecoming a soldier and a gentleman in his relation to the Grand Army of the Republic.

Fourth. Conduct prejudicial to good order and discipline.

The specifications under the several charges are identical, and consist in the statement that the accused, who are editors and proprietors of a newspaper, published therein certain slanderous words concerning the comrade who prefers the charges, who was also editor of another newspaper. One of the accused is a Department Commander, and the accuser is an Assistant Inspector-General. The words are not technically actionable at common law unless special damage has ensued, and such a question can be best decided in the civil courts.

They do not constitute such a libel as an indictment would lie for in a criminal court of any State with whose laws I am acquainted, and so cannot support the second charge.

As I understand the third charge, it must be interpreted with reference to the universal construction put upon the similar expression in the Army Regulation, "conduct unbecoming an officer and a gentleman," by all authorities in military law. In that view not every ungentlemanly act is meant by this expression, but only those acts of a peculiarly mean and dishonorable kind, which no one could perform and still remain a gentleman. The high penalty affixed to the crime by Army Regulations—"Cashiering, without option by

Obligation of Witnesses.

SECTION 5. All members of the Grand Army of the Republic, when summoned, shall attend as witnesses before any court-martial, and their testimony shall be taken on their honor as comrades. The evidence of persons not members shall be taken under oath when not inconsistent with the law of the place where the court is held. When such extra-judicial oaths are forbidden by law, evidence of witnesses not members of the Grand Army of the Republic may be received, in the discretion of the court, on their honor as men, and the fact that they have not been sworn shall be considered by the court in deciding upon their credibility. (*Form*, page 245.)

Note 113[4] continued.

the court to substitute a lesser punishment"—could only be intended to apply to the gravest derelictions, such as unfit a man for the society of gentlemen and make him an outcast from society, and necessarily excludes from this category mere impolite or ungentlemanly acts which may not proceed from a depraved character. If the accused has taken advantage of his position as a Department Commander to issue in orders to his Department the injurious language which he has published in the newspaper, it might support the charge as showing such malignity as would be inconsistent with a proper conception of his position and duties. I do not think the language, as used in an editorial, can be brought within the scope of the charge.

The fourth charge is quite as wide of the mark. Slander of an Assistant Inspector-General by a comrade not of his Department cannot materially affect the order and discipline of the Grand Army of the Republic.

People do not believe everything in the newspapers, and the statements which make least impression on the public credence are probably those which contain commendations of themselves and abuse of their rivals. A newspaper fight is a contest in which no one is killed, and the wounded leave the field in good order.

The specifications might possibly be construed to support the first charge. The tone of the language is very far from that which a spirit of genuine fraternity would prompt.

Yet, newspaper editors, who are personally very good friends, do sometimes permit themselves to indulge in questionable language of each other when the claims of their respective organs are at issue. It is apparent that we are presented here with one portion of such a discussion. If each had not appropriated the name of our Order for the purpose of assisting his circulation, I think no one would consider the Grand Army in any way involved.

It seems to me to be a case where the Commander-in-Chief may exercise a sound discretion in refusing to order a court to try these questions until one of the parties has shown a real and substantial injury, by obtaining judgment against the other in the civil courts.

If the damage is real, it will evidently be ascertained by a resort to the proper tribunals, whether a court-martial is assembled to try the case or not. If the charges are only preferred as a move in the contest, the interests of our Order seem to me to require that we do not lend its aid to any such object.

[Courts-Martial.]

Reviewing Officer.

SECTION 6. No sentence of a court-martial shall be carried into execution until after the whole proceedings shall have been laid before the officer ordering the same, or his successor in office, for his confirmation or disapproval and orders in the case (26), and no sentence of dishonorable discharge from the Grand Army of the Republic, except by court-martial convened by order of the Commander-in-Chief, shall be carried into execution until after the whole proceedings shall have been laid before the officer next superior to the one ordering the court, for his confirmation or disapproval and orders thereon (27–33).

118[5] Any comrade convicted of divulging any of the private affairs of the Grand Army of the Republic, or of violating any of the provisions of this article, *shall be dishonorably discharged.* (Section 2, Article 13, Chapter 5.)

118[6] OPINION 1. N. P. C. July 1, 1871.

1. A member cannot be dishonorably discharged without a trial.

2. Rules and Articles of War a part of the laws of the land.

The question is proposed to me, Can a member of the Grand Army of the Republic be dishonorably discharged therefrom without trial by court-martial, and, if so, by what mode of proceeding?

The facts which require an opinion constitute an extreme case. A comrade of this Order, being in the service of the United States, deserted from that service, was apprehended, and is now awaiting trial by general court-martial.

The Rules and Articles of War are, to persons in the military service of the United States, a part of the laws of the land, in the intent of Chapter 5, Article 6, Section 1, paragraph 3, of the Revised Rules and Regulations of the Grand Army of the Republic. Desertion from the United States army is one of the gravest offences known to military law, and when committed by a member of the Grand Army of the Republic constitutes one of the offences recognized by the paragraph referred to.

The National Encampment, following the enlightened principles of modern criminal codes, has provided for the trial of all charges against members of the Order by courts composed of their comrades, before whom the accused may have opportunity to be heard, if they desire to appear and contest the accusations brought against them.

The only exception to the regulation requiring trial and sentence of a court-martial to precede the expulsion of a member of the Order is found in the amendment to Section 4, Article 4, of the same chapter, passed at the May session of the National Encampment, 1871, providing that if a member be one year in arrears in the payment of dues he shall be dropped from the rolls, which is obviously not applicable in this case.

Appeal for Trial by General Court-Martial.

SECTION 7. Any comrade ordered for trial before a Post court-martial may request in writing to be tried by a general court, assigning his objections to a trial by the Post court. (See par. 3, *Note 113*[34], page 237.) On receiving such request, the Post Commander shall forward the same to the Department Commander, with such endorsement as he shall see fit to make, together with the charges preferred. If the objections appear to be valid and well grounded, the Department Commander shall order a general court-martial for the trial of the case; but if, in his opinion, they should be insufficient, he shall return the request, with an endorsement to that effect, and the trial shall proceed as if no exception had been taken.

113[7] OPINION 24. W. W. D. February 3, 1872.

Dishonorably-discharged members may be readmitted, on reformation, and with the approval of the officer who approved the sentence.

Can a person who has been dishonorably discharged from the Grand Army of the Republic be readmitted, on reformation, by the Post of which he was a member?

There is no provision in the Regulations on the subject of the readmission of dishonorably-discharged members. I should, therefore, hold the opinion that such a person, on reformation, might be admitted by the Post which discharged him, on a new application, and elected as a recruit, such application being first approved by the officer who approved the sentence of the court-martial.

113[8] DECISION 1. L. W.

Dishonorably-discharged members—Readmission of.

Two cases of comrades tried and convicted by court-martial and sentenced to be *dishonorably discharged*, were submitted, their Posts, by unanimous vote, asking that the sentence be revoked and the comrades reinstated, which recommendations were approved by the Department Commanders and forwarded to National Head-quarters.

Not feeling satisfied that these cases came within the provisions of the resolution of the National Encampment, page 724, *Journal*, 1880,* I declined to give the order asked for, but referred the Posts to the Opinion of the Judge-Advocate-General, No. 24, dated February 3, 1872 (113[7]).

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* The resolution of the National Encampment, adopted at Dayton, 1880, is as follows:

The Commander-in-Chief may revise, remit, or reduce the sentences of courts-martial in meritorious cases, at any time, on application, approved by intermediate authorities.

[Courts-Martial.]

Suspension of Officers.

SECTION 8. When charges are preferred against any comrade holding office, the Department Commander or Commander-in-Chief, in their respective jurisdictions, may suspend the accused from office. During the suspension of a Post Commander or Department Commander, the office shall be filled by the Senior Vice-Commander (35).

1189 DECISION 3. L. F.

The remission of a sentence of dishonorable discharge restores the comrade to membership in the Order.

A comrade dishonorably discharged, by sentence approved on or about March 20, 1886, applied for remission of sentence, which application was accompanied by the recommendation of both his Post and the Department Commander that it be granted.

The Commander-in-Chief submitted the question as to the *status* of the comrade after sentence of court-martial has been remitted.

OPINION 3. H. E. T. October 21, 1886.

The act of the Commander-in-Chief in remitting sentence is an exercise of executive clemency in the nature of a pardon, absolving from all further penalty. If not restored to membership by simple remission of the sentence, it follows that the party must make application for admission and be re-mustered, and is therefore not absolved from all penalty. I further think that it was the intention of the National Encampment, in passing the resolution of 1880, to empower the Commander-in-Chief, in meritorious cases, to restore the party to his former *status*, and that the spirit of the resolution is not satisfied by any narrower construction. (See note to 1138.)

It must also, if possible, be so construed as to give force and meaning to the act of the Commander-in-Chief, and if we hold an application and re-muster necessary, his act is deprived of all force, since the right to make application, without his intervention, already exists in cases of this kind.

I am therefore of opinion that when the sentence shall have been remitted the comrade will be restored to full membership, and should be so taken up on the roll of his Post.

11810 DECISION 7. W. W.

A sentence of suspension from office will not attach when promulgated after the expiration of the term of such officer.

Charges were filed against a Post Commander, and upon trial by a court-martial ordered by the Department Commander, he was found guilty and sentenced to be suspended for six months from the privileges of the Order, and that he be degraded from office and deprived of all honors and privileges to

Offences against the Laws and Imprisonment therefor.

SECTION 9. In case the accused is charged with an offence under paragraph 3, Section 1, of this article, the record of his conviction by a court of competent jurisdiction shall be *prima facie* evidence of his guilt of the offence of which he is so charged (36).

In case of his imprisonment for any offence of which he has been convicted, the court may proceed to trial the same as if the accused was wilfully absent (37, 38).

Note 113 to continued.

which he was entitled by reason of having held office in the Grand Army of the Republic. When the charges were preferred against him, he was Commander of his Post; but when the trial was had and the sentence promulgated, his term had expired and his successor was in command of the Post.

The Commander of the Department approved the sentence and issued a General Order to that effect, and directed the sentence to be duly executed.

Later, upon an appeal, the Department Commander revoked the previous order and directed the Post to which the comrade belonged to take up his name and place him on the Post roster as a Past Post Commander.

From this action an appeal was taken to the Commander-in-Chief.

OPINION 7. J. B. J. March 30, 1889.

This case is presented to me for review, with further suggestions than heretofore made. I am, after careful consideration, though with very great hesitation, constrained to submit the following:

First. After the findings and sentence of a court-martial have been duly approved and promulgated by the proper reviewing officer, his authority in the premises is at an end, unless in case of some fatal defect in the constitution of the court or in its proceedings. It is not in his power to revoke his order of approval where the proceedings are all regular, nor can his successor do so. Any other rule would introduce the gravest uncertainty and invite the most careless attention in the enforcement of that good order and discipline so essential to our prosperity and permanence. General Order No. 6 is therefore void, unless there was some such defect in the sentence of the court as would render such sentence void.

Second. No appeal lies from the order of the reviewing officer approving the findings and sentence of a court-martial, except perhaps in a case where the sentence is dismissal from the Grand Army of the Republic. But that question, not being involved in this case, is not decided. There being, therefore, no appeal from the decision of the reviewing officer by the Rules and Regulations, the effort of L. to appeal to the Commander-in-Chief was without avail.

Third. Any member of a Department Encampment may appeal from any order or decision of the Department Commander to the proper authority. Article 7, Chapter 3, Rules and Regulations, is very broad in its terms. It

says, "All members shall have the right of appeal, through the proper channels, from the acts of Posts or Post Commanders and Department Commanders or Encampments to the next highest authority," etc. The appeal is properly taken in this case.

Fourth. The only remaining question, and the one that has given me the most trouble in this case, is, Was the sentence pronounced by the court-martial and promulgated by General Order No. 3 lawful?

I am constrained to say that it was not. The sentence of the court was as follows: "Comrade ——, Commander of Post No. —, to be degraded from office and deprived of all the honors and privileges to which he may be now entitled by reason of his having held any office in the Grand Army of the Republic." It is a familiar principle in criminal law that every doubt must be resolved in favor of the accused, and no penalty can be imposed upon him not clearly provided by law. A court-martial is a criminal proceeding in its nature, and the accused can only be punished in the manner and to the extent provided by the Rules and Regulations. By the terms of Section 2, Article 6, Chapter 5, Rules and Regulations, one of the penalties that may be imposed by a court-martial is "degradation from office." But at the time when the trial was had and the sentence pronounced and promulgated in this case he was not an officer. He had served out his term as Commander of his Post, and was only a past officer. All that could be said of him as an officer at the time when the trial took place was that "he has been, but is not now." Is it possible to degrade one from office when he holds no office? I think not. But the sentence not only attempted to degrade him from an office which he did not hold, but it also provides that he shall be "deprived of all the honors and privileges to which he may be now entitled by reason of his having held any office in the Grand Army of the Republic." Do the Rules and Regulations authorize this sentence? Section 2, above referred to, says the penalties shall be either:

1. Dishonorable discharge from the Grand Army of the Republic.
2. Degradation from office.
3. Suspension from membership for a specified period.
4. Fine; or,
5. Reprimand, at the discretion of the court, subject to the review of the proper officer.

Now, under which of these heads can a past officer be deprived of the honors and privileges of a past officer? Certainly not under either of them, unless it be the second, "Degradation from office." But that could not be, for the reason that the term "degradation from office" clearly implies that the officer so degraded from office holds some office. In this case L. did not hold any office to which the sentence could attach. A past officer is not an officer. Nor could the sentence attach to the honors and privileges that belong to a past officer, because the Rules and Regulations do not permit such a sentence.

I am of opinion, therefore, that General Order No. 3 was void, because that portion of the sentence above referred to was void. It follows that General Order No. 6 was valid, revoking General Order No. 3 and restoring L. to his place on the roster of Post No. 4 as a Past Post Commander of that Post.

118 OPINION 123. W. W. B. May 3, 1880.

Court-Martial.—Immaterial who prefers the charges.
Specifications—Form of; what they should contain.
Official rank not a ground for challenge.

A court-martial, composed in part of comrades who have never held the office of Post Commander, is convened by order of the Department Commander for the trial of a Post Commander for neglecting to forward a document purporting to be an appeal or request.

The document was presented to the Post Commander for his action while he was temporarily absent from Head-quarters in another city, and the charges were preferred by a suspended member, and by him forwarded to Department Head-quarters direct.

1. It is not good ground for challenge that a member of the court has not held as high an office as the accused.

Details for courts-martial may be made from any comrades in the jurisdiction of the officer ordering the court.

2. If an offence has been committed, it is immaterial who signs the charges and specifications. The charges being adopted, and the court convened by higher authority, the particular person forwarding them, or the channel by which they reach Department Head-quarters, are of no importance.

3. To require the accused to transact official business while on a journey, the necessity must be shown and the exigency must be explained to him.

To make out a case, it devolves upon the prosecution to show that the time, place, and manner of presenting the document, in view of the existing exigency, were proper and reasonable, and that the document was of such character that, under all the circumstances, it was the duty of accused, then and there, to receive and forward it.

4. To convict a comrade of disobedience of the Rules and Regulations, in failing or refusing to perform an official act, the specification should charge that he held the office, or otherwise state facts sufficient to show that it was his official duty to perform the act for the neglect of which he is sought to be convicted.

113[12] Opinion 36. W. W. D. June 5, 1872.

The Judge-Advocate should be detailed with reference to his qualifications.

Must the junior officer act as Judge-Advocate?

1. In regard to the constitution of the court, it may be said that our universal practice has been to consider any comrade eligible to any office. Details for courts-martial may, therefore, be made from any comrade in the jurisdiction of the officer ordering the court.

2. It was usual in the service for the officer ordering the court to exercise a wide discretion in deciding of how many members the exigencies of the service would permit the court to consist. I think that in detailing our courts the same discretion may be exercised. The Judge-Advocate should be detailed with reference to his qualifications for performing his duties, without regard to official position.

113[13] Opinion 68. W. W. D. October 14, 1875.

Department Commander may designate who shall preside in a court convened by him.

A Department Commander ordered a general court-martial, composed wholly of Post Commanders, and named one of them President. Another

member of the court protests against the appointment of the President by the Department Commander, taking the ground that the senior officer detailed must preside, and asks, What determines rank in the Grand Army?

The Department Commander assumes that all the officers of the court were of equal rank, and hence, necessarily, that a choice must be made by him.

If such were the fact, inasmuch as no army precedent could be adduced, and our Regulations do not provide for such a case, I should hold that he assumed a convenient and necessary power. . . .

When a commanding officer exercises a discretionary power which falls upon him from the necessities of an unanticipated case, he can only be held to the exercise of his best judgment; and if he does not on the moment select the course which on mature reflection would seem most wise, yet, having acted in good faith, he will be sustained. . . .

I do not know that we have any means of deciding questions of seniority between two Grand Army officers of the same official grade, unless we follow the analogy of the service, and decide in favor of the one who has been longest in office. But, between two Post Commanders, who are elected for the first time in the same December, and installed at the next stated meetings of their respective Posts, though one Post should hold its meetings earlier in the month than the other, I do not see that any distinction can be justly made.

Upon this point, as upon all similar ones which must be decided somewhat arbitrarily, I conceive that any rule established by the Commander-in-Chief would be acquiesced in as correct; and until some uniform rule is adopted, the decision of the Department Commander in his own jurisdiction must stand.

1134 OPINION 110. W. C. January 17, 1880.

Commander-in-Chief convenes the court for a member [officer] *of the National Encampment. Same if the Department Commander is the accuser.*

1. Has the accused, who is a member * of the National Encampment, the right to be tried by a court-martial convened by order of the Commander-in-Chief, the offence with which he is charged having been committed in his capacity of a Department officer?

2. The charges having been preferred by the Department Commander, has the accused the right to be tried by a court-martial convened by order of the Commander-in-Chief?

1. I am inclined to accept the natural meaning of the language used in Chapter 5, Article 6, Section 3, Rules and Regulations, which is as follows: "Members of the National Encampment and officers of the National staff shall only be tried by courts convened by order of the Commander-in-Chief."

No exception is made in case the offence is committed against a Department or in his capacity of a Department officer. And there would seem to be reason for this construction, for he is accused of an offence against the Order, and a conviction must affect his standing as a member of the National Encampment.

2. If the Department Commander is the *accuser* or *prosecutor*, the court should be convened by the Commander-in-Chief.

* This Opinion will be governed by the amendment to Section 3. Members of the National Encampment (unless they are executive officers specially designated in this section) are amenable to Post court-martial.

It has been contended that an officer may sign the charges and specifications without being the accuser or prosecutor; but I am of the opinion that the person preferring the charges is *prima facie* the accuser, and that in this case the court-martial for the trial of Comrade T. upon the charges and specifications preferred by Comrade H., Commander of the Department of N——, should be convened by order of the Commander-in-Chief.

118[15] OPINION 124. G. B. S. March 23, 1881.

Commander-in-Chief may refuse to convene a court-martial.

Is the Commander-in-Chief compelled, by the Rules and Regulations, to convene a general court-martial whenever charges are preferred against any member or officer of the National Encampment, or can he exercise the discretion permitted to Posts under the rules prescribed in the MANUAL, relating to "petty cases" or charges "too trivial for a trial by court-martial"?

The right of the Commander-in-Chief to refuse to order a trial by court-martial is one already recognized by one of my predecessors, Judge-Advocate-General Douglas, in Opinion 65 (1134).

It is a privilege accorded to the regular service, and is a right which has been exercised by previous incumbents of the high office on many occasions.

There is no paragraph in the Rules and Regulations which conflicts with this view of the case.

Were it otherwise, no comrade would be secure against trial by court-martial on some trivial charge, the expense of which trial would seriously deplete the treasury and accomplish no good.

The rules referred to are evidently intended to give to Posts a power which did not therein exist, and have no bearing upon the authority of the Commander-in-Chief.

It is a rule of military law that subordinate officers, in forwarding charges and specifications, should examine the papers carefully before giving their endorsement, to the end that only such charges should be considered as bear unmistakable evidence that a serious offence against discipline or a grave crime has been committed.

This implies the right of a Department Commander to return charges which are "too trivial," or the trial of which would prove detrimental to the Order. And of course the same power in a higher degree must rest with the Commander-in-Chief.

I answer, then, that the Commander-in-Chief may use his own discretion as to whether a general court-martial shall be ordered or not.

118[16] DECISION 29. J. P. R.

The refusal of a Department Commander to order a Department court-martial for the trial of charges and specifications will not be reversed by the Commander-in-Chief, except in cases where it clearly appears that he has misjudged the law or the facts, or has been actuated by improper motives.

118[17] OPINION 46. W. W. D. March 24, 1873.

A Post Commander who is also a member of the Department Council of Administration, accused of an offence, must be tried by a court convened by the Department Commander.

[Courts-Martial.]

Is it proper to suspend a Post Commander, who is also a member of the Department Council of Administration, when accused by members of the Post of appropriating Post funds to his own use?

The Department Commander should direct charges to be preferred if he is satisfied that there is any foundation for the accusations; and should then suspend the accused until the finding of the court. The charges in this case should be tried by a court convened by order of the Department Commander.

113[18] DECISION 11. J. P. R.

A Post court-martial can only be convened by a majority vote of the Post, and the findings and sentence thereof must be approved by a majority vote.

113[19] DECISION 28. J. P. R.

A Post court-martial may be dissolved by vote of the Post.

A Post court-martial, duly ordered to try an accused comrade upon charges and specifications, was dissolved by vote of the Post upon the request of the Judge-Advocate, who gave as his reason for the request, that "it seemed to be impossible for the court-martial to convene with a quorum." The Commander ruled that this action was in effect an abandonment of the charges, and declined to appoint another court, and in this ruling was sustained by the Post.

In the absence of anything showing a contrary intention, *held*, that the charges and specifications were dismissed.

113[20] OPINION 107. W. W. B. January 6, 1880.

Court-Martial—Junior Vice-Commander of Department may be appointed on.

Can a Post Commander, in a special order convening a Post court-martial, appoint as a member of the court a member of the Post who is Junior Vice-Commander of the Department?

When a Department officer is on duty, as a Department officer, he is not subject to the orders of the Commander of the Post; but he is entitled to the rights and privileges of a member of his Post if he sees fit to avail himself of them. He must pay his dues, and he may at the same time be an officer of the Post, and when acting as a member or officer of the Post he is under the jurisdiction of the Post Commander.

The Post Commander in detailing a court-martial should exercise a sound discretion. He should not select those near of kin to the accused, or those known to entertain prejudice, and should not detail a comrade who would probably be the reviewing officer. The accused could challenge for cause any such member. But if the Junior Vice-Commander of the Department, detailed by the Commander of his Post as a member of a Post court-martial, sits unchallenged as a member of the court, the proceedings will not thereby be rendered invalid.

It may so happen that a comrade who has served as a member of a Post court-martial may subsequently be elected Department Commander, and when the proceedings reach Department Head-quarters, he may be in the position of reviewing officer, in which case analogy would suggest that the proceedings be

forwarded to the Commander-in-Chief, or the Senior Vice-Commander act as reviewing officer in passing upon the case. But the contingency has not arisen and that question is not before me.

113[21] If the absence of the accused is caused by his imprisonment, the court may proceed to trial. (See *Note 113*[37], page 239.)

113[22] For form of notice, see page 243.

113[23] DECISION 15. S. S. B.

A trial and conviction by court-martial of a comrade, however unworthy he may be, without notice or without any direct testimony proving, or tending to prove, the charges, is wholly illegal and void.

OPINION 15. C. H. G. June 18, 1886.

A comrade was tried by court-martial on the charges of: *First.* "Disloyalty to the United States of America;" and the specifications set out that he deserted the service.

Second. "Conduct unbecoming a soldier and a gentleman in his relation to the Grand Army of the Republic." The specification to this charge was that he had procured a pass from his commanding officer to muster a Grand Army Post, and while on that pass deserted the service of the United States.

The accused was not present, and had no notice of the time or place of the trial. (See *Journal*, 1886, page 113, for testimony taken.)

The court found him guilty, and sentenced him to be dishonorably discharged from the Grand Army of the Republic, and to be forever ineligible to enter said Order.

Afterwards, an appeal was presented, and the record of the case disclosed that the comrade is a very bad man, if the allegations in sundry letters and documents which were put into the record long after the trial are correct, and I have no reason to doubt that they are. But upon the whole case I make the following opinion:

This record makes it apparent to me that in all human probability Comrade M. is an unworthy member of the Grand Army of the Republic; but unfortunately there is no question but what his trial by court-martial, conviction, and sentence were wholly illegal and void. He was convicted without any evidence and without any notice. The cardinal principles of justice in the case were wholly ignored. I regret that it seems to be my imperative duty to recommend that the findings, sentence, and judgment in this case be set aside, and that the Post to which he belongs be directed to proceed regularly to prefer charges against him.

113[24] DECISION 12. S. S. B.

A refusal to permit a comrade to introduce testimony tending to prove a negative of the principal charges and specifications upon which he was court-martialled is a fatal error, which cannot be cured, and the decision of the court in such case, if adverse to the accused, should be reversed.

[Courts-Martial.]

Opinion 12. C. H. G. 1886.

Charges and specifications were preferred against a comrade by order of a Post. The charges were: 1st. Violation of paragraph 3, Section 1, Article 6, Chapter 5, Rules and Regulations of the Grand Army of the Republic. 2d. Violation of paragraph 5, Section 1, Article 6, Chapter 5, Rules and Regulations of the Grand Army of the Republic. The specifications of both charges charge the comrade with unlawfully possessing himself of certain property of the Post, and with failing to return the same on demand. The charges originally embraced a number of comrades, but none were tried excepting W. C. and M. M.

The court sentenced them to be suspended for the period of two years, and that sentence was approved by the Department Commander. The whole record of this case shows a series of irregularities. They were found guilty of the second charge; but it appears that the comrades had, prior to the preferring of the charges, taken transfer cards, and the charges were preferred against them while they were waiting for admission into another Post.

The record of this case shows: *First.* The second specification upon which the comrades were tried was demurrable upon its face, and contained no cause of action against the comrades. It is in the following language, "In this, that the said Comrade W. C. having received a communication from —— Post, demanding the return of property in his possession belonging to said Post, refused or failed to return said property, and refused or failed to return any answer or notice of his intentions to said Post; thereby treating the Post with contempt, to the prejudice of good order and Grand Army of the Republic discipline."

Second. There was no evidence tending to show that the comrades had been guilty of the specifications charged in any event.

Third. It appeared that upon the trial the comrades were refused permission to prove that they had the arms about which complaint was made for a lawful purpose, and were lawfully entitled to hold them.

This was a fatal defect, and cannot be cured. They were charged with unlawfully holding property, and they offered to prove that they had a right to hold it. They were refused the privilege.

The record is fatally defective.

1135 Decision 36. L. F.

Where a Department Commander, as reviewing officer, has disapproved the sentence of a Post court-martial, his action is final; and under such circumstances the Post may not deny to the comrade who was tried the rights and privileges of the Order, or refuse to recognize him as a member.

Where there is objection to our form of court-martial procedure, the proper remedy is by application to the National Encampment for a change, and not by demand that the Commander-in-Chief shall take action unwarranted by law.

A comrade was tried by Post court-martial, and the sentence of dishonorable discharge having been disapproved by the Department Commander, an appeal

was made to the Commander-in-Chief, in which it was held that the decision of the Department Commander was final. (Opinion 30, 113 33.)

Another comrade of the same Post was subsequently tried and sentenced to dishonorable discharge by Post court-martial, and the sentence was disapproved by the Department Commander.

The Post thereupon presented this memorial to the Commander-in-Chief, asking for relief, protesting against the acts of the Department Commander in disapproving the sentences, condemning our present system of court-martial procedure, and resolving that the two comrades should be "ostracized from and denied all privileges of the Order" until the memorial should be heard and acted upon.

With the memorial was a statement of the two cases, closing with these words: "These men must be expunged, or this Post will be compelled to surrender its charter, for we cannot recognize them as comrades or respectable citizens, and will not permit them to associate with us as members in good standing."

The proceedings, finding, and sentence of the court-martial in the second case also accompanied the memorial.

Opinion 36. H. E. T. July 11, 1887.

If any comrade or any Post has serious objections to our court-martial procedure, the proper remedy is by application to the National Encampment for a change in the law, and not by memorial to the Commander-in-Chief, demanding action that he has no power to take. Whatever our Regulations may be, they are equally binding upon all from the lowest to the highest, and all must be governed thereby. As they at present stand the officer next superior in rank to the one ordering the court is made the reviewing officer, where the sentence is dishonorable discharge, and it has been held again and again that where he disapproves the proceedings, finding, and sentence, such action is a finality, and ends the case. In view of this, I can only reiterate the opinion already expressed in Opinion 30 (113 33), that no appeal by the Post can be considered.

In the case of J. F. N. the same facts exist, and the Department Commander having disapproved, nothing really remains to be done. Inasmuch, however, as the Department Commander has forwarded with the memorial the papers in that case (the papers in the M. case did not accompany), I have looked them over, and can only say that in my opinion his decision was correct. N. was tried on the single charge of "conduct unbecoming a soldier and a gentleman in his relation to the Grand Army of the Republic." The only evidence offered in the case was, that having contracted a debt with another comrade in business matters having no connection with the Grand Army of the Republic, he left town without making payment in full; and also made a false statement, when asked for the money before leaving. While such conduct is reprehensible and should be severely condemned, I do not see how the offender is liable to the charge as quoted above.

Further than this, it seems to me that the memorialists in this matter, in their desire to secure the dishonorable discharge of these two comrades, and in their disappointment at the action of the Department Commander, have permitted their zeal to outrun their discretion and have stepped beyond the line of rightful criticism and appeal, and have assumed a tone in the memorial that is disre-

spectful to superior officers and borders upon conduct prejudicial to good order and discipline. It is not competent for any Post to say after the sentences have been disapproved, as it is said in this memorial, that the comrades "shall be ostracized from and denied all the rights and privileges of the Order;" and when the memorial goes on to add, "These men must be expunged, or this Post will be compelled to surrender its charter, for we cannot recognize them as comrades or respectable citizens, and will not permit them to associate with us as members in good standing," an attempt is made to set up the will of the Post against the law and authority of the Order, and the position taken is utterly indefensible. Inasmuch, however, as the memorialists seem to be actuated by a desire to secure what they think is right and for the best interest of the Post, I am willing to believe that no disrespect was intended, and that the writer of the memorial did not appreciate the force of the expressions used.

It should, however, be clearly understood, that no Post can set up its own ideas of law and proceed to act on them, in defiance of the rulings of the Commander-in-Chief; and that the two comrades in this case are not to be deprived of their privileges in the Order by reason of the action of said courts-martial.

Of course, one acquires no right to any social recognition by the mere fact of membership; and so far as that is concerned the matter is in the hands of each individual comrade.

113[26] The findings and sentences of Post courts-martial shall be approved or disapproved by a majority vote of said Post, subject to an appeal to the Department Commander. If the sentence of any Post court-martial shall be *dishonorable discharge* or *dismissal*, if approved by a majority vote of the Post, the proceedings, findings, and sentence shall be forwarded by the Post Commander to the Department Commander (through the Assistant Adjutant-General of the Department) for his approval. Such a sentence cannot be promulgated without his approval.

As to Reviewing Officers.

113[27] Opinion 64. W. W. D. March 16, 1875.

Post Commander has no power to pardon.

Reviewing officer may mitigate a sentence. His action final.

Has the Post Commander power to pardon a comrade condemned by sentence of Post court-martial to suspension for one year?

In the absence of any regulation permitting the remission of a penalty regularly ordered, I am of the opinion that no such power exists. I think that by military usage the reviewing officer has the power to mitigate a sentence when it is sent up for his approval, but not after he has once passed upon it. His action then becomes final, and he cannot afterwards reverse or modify it.

113[28] Opinion 73. W. W. D. May 10, 1876.

If the sentence of a court-martial is inadequate in the opinion of the reviewing officer, he may send it back for revision.

If the reviewing officer has already passed upon the sentence, there is no remedy.

A Post tries a comrade by court-martial. His offence is a grave one and deserves the utmost punishment in the power of the court to inflict. The comrade pleads guilty, and the sentence of the court is merely nominal,—entirely disproportioned to the offence. Can the Department Commander order the case to be reviewed by the court? Is there any remedy?

If the sentence of a court-martial is inadequate in the opinion of the reviewing officer, he may send back the proceedings for *revision* before the court is dissolved, stating his reasons and views to the court. If they still adhere to their sentence he is powerless, except to disapprove the sentence or to order the execution of it.

This power is implied in the words "orders thereon," occurring in our Rules and Regulations, Chapter 5, Article 6, Section 6, where they are quoted from the Sixty-fifth Article of War; or perhaps it is a power directly flowing —to use the words of Mr. Benet—from the very constitution of courts, as a consequence of the right of confirming and disapproving the sentence. At any rate, it has been fixed by custom, and is the established practice in the United States service.

The mode of procedure on revision is stated fully in Chapter 13 of Benet's "Law and Practice of Courts-Martial," which will be accessible to, and should be consulted by, the Judge-Advocate of the court. (See page 146, *et seq.*; also De Hart's "Military Law," page 204, *et seq.*, to the same effect.)

If the reviewing officer has already passed upon the sentence there is no remedy.

1182[29] Opinion 105. W. W. B. December 17, 1879.

No appeal from the action of the reviewing officer.

A comrade, tried by Post court-martial, and sentenced to suspension for ten years, appeals to the Department Commander, who disapproves the finding of the court-martial, and reverses the sentence of suspension.

Has the Post or its officers, who are prosecuting the case, the right of appeal to the Commander-in-Chief?

There is no such right of appeal. A court-martial, where the Rules and Regulations are silent, is governed by military law and usages.

In this case the proper reviewing officer passed upon the sentence, and no appeal is granted to the prosecuting authority.

The Department Commander may submit any of the questions to National Head-quarters, but this, with him, is entirely a matter of discretion.

1183[30] Opinion 56. W. W. D. October 29, 1873.

Where the Department Commander, as reviewing officer, reverses the sentence of dishonorable discharge, there can be no appeal to National Head-quarters.

The question is proposed whether a Post which has ordered a trial of a member by a Post court-martial, upon the conviction of the accused and the reversal of the sentence of dishonorable discharge by the Department Com-

mander, the officer next superior to the officer ordering the court, has a right to appeal to National Head-quarters from the order of the reviewing officer.

Appeals from acts of Post Commanders are given by Chapter 3, Article 7, Rules and Regulations. Such appeals are, I think, intended for the protection of members who are aggrieved by the acts from which appeal is taken. The course of appeal is from the decision of the Post Commander to the Post, thence to the Department Commander, thence to the Department Encampment or Council of Administration, if either is in session, and afterwards, or if they are not in session, directly to the Commander-in-Chief, and from him to the National Encampment or Council of Administration.

The right of appeal from the original acts of a Department Commander or Department Encampment is nowhere given in express terms in the Regulations, but has been invariably claimed and allowed as a consequence of the relative subordination existing between the various officers and organizations of the Order.

A right thus established and not defined by positive enactment must be construed with reference to the proprieties of the case, the nature of the question, and the Regulations indirectly bearing upon it.

If the appeal claimed refers to a subject which is considered in the Regulations, what they say about its treatment will throw considerable light upon the question whether an appeal is proper.

The whole subject of discipline is treated in Article 6, Chapter 5, and the provisions which apply to this case are contained in Sections 4 and 6 of that article.

No general regulations for the government of courts-martial (which I consider to be the meaning of the words, "such orders as may be issued from Head-quarters,") have ever been promulgated;* so a court is to be governed by military usage, and no intimation is given that the decision of the proper reviewing officer is subject to appeal, any further than military usage gives one. In this case the proper reviewing officer passed upon the sentence, and returned the papers with his orders therein.

Upon the principles of criminal law, civil and military, a decision in favor of the accused is generally conclusive, and no appeal is granted to the prosecuting authority. From humane considerations, objections by a prisoner are allowed, and if found valid, even where his substantial guilt is established, he is discharged or a new trial is granted him. It would be introducing an anomaly into criminal practice to subject a prisoner to a second trial, even after he had been acquitted by the ruling, though presumably incorrect, upon the merits of the case, of the authority legally constituted to decide it.

If the reviewing officer had approved the sentence of the court in this case, and the accused had appealed from the sentence, would not the Post have urged that in a case like the present the Regulations had granted full power and authority to the Department Commander to approve and execute the findings of the court?

No doubt, if the Department Commander was in doubt as to the law, he might submit to National Head-quarters such questions as occurred to him, and would be governed in his decision of the case by the answers he should receive, but this is in his discretion. He has not seen fit to do so, and has decided the questions which are raised and have never been decided by higher authority. I do not see that an appeal should be granted the prosecutor where one could not be claimed by the accused.

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* See Rules now in force, page 241; but this Opinion is not affected by these Rules.

118 [37] OPINION 145. J. R. C. April, 1883.

No appeal from the decision of Department Commander when acting as the reviewing officer of the proceedings of a court-martial.

The President and Judge-Advocate of a court-martial appeal to the Commander-in-Chief from the decision of the Department Commander in reviewing the findings and sentence of the court, and praying the Commander-in-Chief to "order the production, before him, of the original and entire record of said court-martial, for his examination on this appeal," with opportunity for said President and Judge-Advocate of the court to submit a brief in support of their appeal.

The "Grounds of Appeal," as stated, are six in number, and are as follows:

First. That the charge, findings, and sentence of the aforesaid court-martial therein assumed to be reviewed are not therein set forth as is required by military usage and custom, which, in the absence of specific rules to the contrary, are to be followed and observed in such cases by the Grand Army of the Republic.

Second. That there is no provision in said order and paragraph dissolving said court-martial or relieving the members thereof from duty on the same, and the obligations incumbent on such duty.

Third. That the said order and paragraph alleges matter which is not fact, and which serves to place the undersigned and the said court-martial in a false and obnoxious position.

Fourth. That the design and intent of said order and paragraph is not in good faith to review the proceedings of said court-martial, and to define and correct the errors, if any, committed by said court-martial, but to conceal their findings and to hold the officers and members of said court-martial up to ridicule and contempt, and, further, to smother their proceedings and sentence without just reason or right.

Fifth. That the alleged decision of disapproval, and the alleged grounds therefor, are erroneous both in law and in fact; while the actual findings and sentence of said court-martial were correct both in law and in fact, and should have been approved.

Sixth. The undersigned do further appeal from said order and paragraph upon the ground that they have been and are aggrieved thereby, both in their official capacity and as members of the Grand Army of the Republic, for which grievance they are entitled to redress at the hands of the Commander-in-Chief of the Grand Army of the Republic.

In my opinion, the first question that is presented in this case is, Can an appeal be taken from the decision of the Department Commander, rendered as the reviewing officer of the proceedings of a court-martial, it being his duty to review the proceedings? The duty of the Department Commander and the rights of the accused are very clearly defined in Section 6, Article 6, Chapter 5, Rules and Regulations.

It was the evident intent of the framers of the Rules and Regulations, and of the National Encampment, to place restriction upon the powers of a court-martial, and to give the accused an additional protection from unjust or unmerited censure or disgrace. And when this power was conferred on the reviewing officer, it was made an *unlimited* power to examine the proceedings, and was "for his *confirmation* or *disapproval* and orders thereon."

The action, then, of the reviewing officer must, necessarily, be final; no

appeal is provided for either by the Rules and Regulations or by the United States Army Regulations. If he, the reviewing officer, approves, it gives life to the sentence of the court, which, before his approval, had naught but form. Not so where the finding or sentence is disapproved. Such disapproval *entirely destroys* and *sets aside* the action of the court-martial. "A *disapproval* of the proceedings of a court-martial by the legal reviewing authority is not a mere expression of disapprobation, but a final determinate act putting an end to such proceedings in the particular case, and rendering them entirely nugatory and inoperative." (See Winthrop's Digest of Opinions of the Judge-Advocate-General (U.S.), Section 2, page 435.)

Says the same authority, page 436, "It is quite immaterial to the legal effect of a disapproval whether *any reasons* are given therefor, or whether the *reasons given are well founded in fact or sufficient in law.*"

This being the case, then the power to approve or disapprove rests fully and entirely in the reviewing officer, and his action is a finality, and there can be no appeal therefrom.

This settles all the questions raised in this appeal, and the Commander-in-Chief has no authority and can make no order that would be obligatory on the Department Commander. Whether the Department Commander acted in good faith in his decision is a matter of his own conscience and judgment, and cannot be inquired into in this proceeding.

118[32] Decision 30. L. F.

Where the Department Commander, as reviewing officer, has disapproved the sentence of a Post court-martial, there can be no appeal by the Post.

A Post appeals from the action of the Department Commander, as reviewing officer, in disapproving the proceedings, findings, and sentence of dishonorable discharge.

Opinion 30. H. E. T. May 21, 1887.

The law is too well established for any doubt, that where the proper reviewing officer reverses a sentence of dishonorable discharge, there can be no appeal to the National Head-quarters.

This question will be found exhaustively considered in Opinions 73, 105, 56, and 145 (above), and does not require further discussion.

118[33] Opinion 30. W. W. D. April 15, 1872.

A Post has no right to order the publication of any sentence of a court-martial.

If a Post court-martial a comrade, can they reveal the sentence to the outside world, or can the injunction of secrecy be removed if the Post vote to do so, and the case be exposed to people generally?

It has not been our practice to divulge any of the proceedings of Posts, except the names of officers elected. And although there is no direct injunction of secrecy in regard to the sentences of courts-martial, the spirit of our Regulations is against such publication. It seems wrong that any punishment which we inflict should extend beyond our Order. I do not think we have any right

to divulge to the world any information concerning a man's character which we have obtained by means of his membership in the Grand Army.

The Regulations do prescribe that no information as to the causes or means of the rejection of applications for membership shall be divulged, and I think the same reason would forbid the publication of any sentence of a court-martial.

I am of opinion, therefore, that the Post has no right to order such publication.

11834 OPINION 52. W. W. D. January 6, 1873.

Court-Martial.—1. Accused entitled to copy of charges and specifications—When?

2. Proceedings shall be in accordance with United States Army Regulations.

3. Request for trial by Department court must be made before the time fixed for the meeting of the Post court.

4. Where the evidence is not furnished the record is incomplete, and a new trial may be ordered by Department Commander or reviewing officer.

5. If a new trial is ordered, Department Commander may order trial by Department court.

The following Opinion upon the record of a court-martial and various questions raised by the reviewing officer in relation thereto is inserted here, as some of the principles discussed may find application in other cases:

1. The statement and correspondence submitted show that after receiving due notice of the time and place appointed for his trial, the accused wilfully neglected to present himself and plead to the charges and specifications. On the day after the time appointed by the court he addressed a note to the Post Commander, by whose orders it had convened, requesting a copy of the charges and specifications. These were not furnished him, but he was subsequently notified of the time and place to which the court had adjourned. At the second meeting he did not appear until a late hour, when the court were deliberating upon their sentence, having already found him guilty. Instead of requesting to be allowed to plead, or to have further time given him for defence, he addressed the court in an abusive manner, and was ordered, in consequence, to leave the room. The next day he addressed a communication to the Department Commander, requesting a trial by a general court-martial, and alleged that the proceedings against him were characterized by malice and unfairness.

2. The position taken by the Post Commander, that the Rules and Regulations do not require that the accused should be furnished with a copy of the charges and specifications, is perhaps correct when he does not request it; but in this case the request was made, as appears from the correspondence, before any action had been taken by the court beyond organizing and entering the plea of not guilty. The Regulations prescribe that the mode of proceeding of courts-martial shall be in accordance with the United States Army Regulations and established military usage. (Chapter 5, Article 6, Section 4.) This provision would require that the request of the accused should be granted; and if he had appeared at the adjournment of the court, and there renewed his request, it would have been the duty of the court to furnish the copy, and give him time to plead and prepare his defence. But it does not appear that he ever acknowledged the authority of the court, or informed them that he desired to

know the charges, or to appear and defend himself. So far as they were concerned, their conduct in the premises was regular and legal. They were simply to inquire whether he had received notice as required by the Regulations; and if they were satisfied that such was the case, they were to proceed as if he had been present and pleaded not guilty, which would imply that he knew what the charges were. It appears from the record that they did this.

3. The appeal to the Department Commander, and the request for trial by a Department court-martial, was not intended to be made after trial by a Post court, so as to give the accused two trials. It should be made before the time fixed for the meeting of the court, or, at the latest, at the time when the court first meets before the opening of the case. If the defendant, by his wilful neglect, permitted the court to take jurisdiction, he must be considered as waiving his right to object to it. Nor does this interpretation of the Regulations unjustly affect the accused; for any objection which he might make to the court in respectful language would be forwarded with the copy of the case for the review of the proper officer, and would influence his judgment of the sentence.

4. The record of the court is then before the Department Commander for his examination and approval or disapproval and orders in the case.

5. His first duty is to see that the proceedings appear to be regular, and then to decide if the findings are supported by the evidence. But in this record there is no report of the evidence. It is impossible, therefore, for the reviewing officer to say whether the findings are warranted by the testimony or not, and he cannot say whether the sentence ought to be executed or not. This is a radical defect in the record. If the evidence can be supplied from minutes taken at the time, the record may be amended by its insertion, and signed again and forwarded for the reviewing officer's examination; but if not, and it does not appear to me to be possible, then the sentence cannot be carried into effect, and a new trial must be ordered. It is for the Department Commander to say whether, if a new trial must be had, it will not be best, under the circumstances, to order a Department court, composed of comrades who have not already formed an opinion upon the guilt or innocence of the accused, as the members of his Post must now have done.

118[35] OPINION 66. W. W. D. July 30, 1875.

Court-Martial—Accused may or may not be present at.

Post Commander has no power to suspend a member of a Post against whom charges have been preferred, before the decision of the case.

Department Commander or Commander-in-Chief may suspend an officer from discharge of his official duties, but not from his rights as a member.

The question is proposed, whether a Post Commander may suspend a member of the Post against whom charges have been preferred, before the decision of the case.

I agree with the Department Judge-Advocate that he has no such power by reason of charges preferred.

The question whether a Commander may not temporarily place in arrest a comrade who is disorderly on parade or in a Post meeting is not the one under discussion, and this discrimination, if borne in mind, will assist in the decision of the point proposed. I think that the fear of the Department Commander, that the Judge-Advocate's decision would be subversive of discipline, arose from his overlooking this fact.

The object of arrest in a criminal suit, or in the case of charges being pre-

ferred in military service, is to secure the attendance of the accused at the trial, and that he may be within the reach of the sentence. Obviously, the state of arrest is inconsistent with the performance of duty by a private soldier or the exercise of authority by an officer.

In our code of discipline it makes no difference whether the accused is present at the trial or not. If he wilfully absents himself after notice, the court may hear testimony and determine the case in his absence. We have neither the power nor the motive to restrain him of his liberty, and the deprivation or suspension of his rights as a member, which would be the natural result of duress, cannot be inflicted except from such a necessity. The fact of arrest being absent, the incidents of arrest fail. As the Judge-Advocate suggests, to suspend a comrade from his privileges in the Post because charges are preferred against him would be to anticipate the judgment of the court, and to inflict punishment upon a man whom the law as yet presumes to be innocent.

The case of an officer is somewhat different. It might be, in certain cases, improper for the official duties of a Post to be performed by a person against whom charges were pending; he might even have the official custody of the proofs of his guilt; and so the Regulations give the Department Commander or Commander-in-Chief the power to suspend an officer, who is accused of an offence against the Regulations, from the exercise of his office. The framers of the Regulations thought it necessary to confer this power by positive enactment, and it is to be inferred that they did not consider that the preferring of charges would give the power by implication.

Even in the case of an officer, the accused is not suspended from his rights as a member of the Post, but only from his office.

The decision of the Post Commander should be overruled and the comrade restored from suspension.

1183[36] A record of conviction must be certified under seal of the court by the proper officer. (See Section 9, page 223.)

1183[37] No comrade can be tried while absent, by reason of his confinement in prison, except upon charges covering the same offence for which he is at the time undergoing such imprisonment. (See Section 9, page 223.)

1183[38] Opinion 32. W. W. D. April 15, 1872.

A Post may, at the request of a comrade, inquire into the character of that comrade, and read the evidence to the Post.

Is it proper for a Post, by vote, to collect, and have read in open Post, evidence involving the character and reputation of a comrade?

The facts upon which this question arises are as follows: A comrade having been indicted for larceny, and having pleaded guilty, was sentenced and committed to jail. He wrote to an officer of the Post of which he was a member, asking the aid of the Post to procure his pardon or relief. The Post, by vote, directed the Commander to collect information in the case. He wrote to the comrade imprisoned and the sheriff of the county, and the replies to these letters were, by vote of the Post, read in open meeting.

From this action of the Post the comrade who asks the question appeals.

I should have no hesitation in answering the general question in the negative. If any comrade knows anything in the conduct of any other which makes him an unfit associate of the members of the Post, he should prefer charges, and have his knowledge brought before a court-martial in the form of evidence.

But this case seems, as suggested by the Post Commander, an exceptional one. The comrade here invites the inquiry of his comrades into his conduct and circumstances by asking their assistance. He writes to them, confessing his guilt. I think that any right he may have had to object to the publication in Post meeting of evidence tending to convict him of crime was waived by his communication to them asking their interference, and certainly by his second communication, directed to the Adjutant, and evidently intended by him to be shown to the Post. The objection that the same comrades who heard this confession might be detailed to sit on a court-martial for the trial of a comrade is not so valid as the same objection would be to their sitting on a jury in a common law court.

In the first place the record of the conviction of the comrade by the State court would supersede his written confession as evidence before the court-martial, and he would probably plead guilty, as he did at first. And, secondly, if he desired it, the Department Commander, under our Regulations, would detail a court-martial from other Posts whose members were not acquainted with the facts.

In the present case, therefore, I think the action of the Post was right.

RULES OF PROCEDURE

FOR

COURTS-MARTIAL.

FROM and after promulgation hereof, no Post court-martial shall be convened, except when the same shall have been ordered by a majority vote of the Post of which the accused shall be a member, or of the Post under whose jurisdiction or control he shall be at the time, or by the Department Commander.

If a Post deem charges, duly presented, too trivial for trial by court-martial, yet requiring investigation, upon a motion duly made, and adopted by a majority vote of the Post, the Post Commander shall appoint a COURT OF INQUIRY, of three or five comrades in good standing, to whom the matter shall be referred, with authority to make such examination as may by them be deemed necessary, reporting in writing, at the earliest date, their findings and recommendations thereon for the action of the Post.

The findings and sentences of Post courts-martial shall be approved or disapproved by a majority vote of said Post, subject to an appeal to the Department Commander. If the sentence of any Post court-martial shall be *dishonorable discharge* or *dismissal*, if approved by a majority vote of the Post, the proceedings, findings, and sentence shall be forwarded by the Post Commander to the Department Commander (through the Assistant Adjutant-General of the Department) for his approval. Such a sentence cannot be promulgated without his approval.

Post courts-martial shall be composed of not less than five (5) nor more than nine (9) members and a Judge-Advocate, all of whom shall be appointed by the Post Commander in a special order convening the court. He shall name the comrade who shall act as the President of the court, and the other members of the court shall rank before the court according to their numbers or names in the said special order appointing the court.

Five members shall be necessary to proceed with the trial. If the court is reduced below that number from any cause, the Judge-Advocate shall notify the officer who convened the court, and further proceedings shall be adjourned until such time as the vacancies shall be filled. The adjournment must be to a definite time.

Form of Order for Appointment of Court.

When a Post court-martial has been ordered by the Post, the following form shall be used by the Post Commander:

HEAD-QUARTERS.....POST, NO.....,
DEPARTMENT OF....., GRAND ARMY OF THE REPUBLIC,
....., 18.....

SPECIAL ORDERS NO.....

A Post court-martial is hereby appointed to meet at.....
.....
on the.....day of....., A.D. 18.....,
or as soon thereafter as practicable, for the trial of Comrade.....

DETAIL FOR THE COURT.

1.	Comrade....., *President.*		6.	Comrade.....	
2.	"		7.	"	
3.	"		8.	"	
4.	"		9.	"	
5.	"				

Comrade.....to be Judge-Advocate.

By order of the Post.

.....,
Post Commander.

.....,
Adjutant.

Form of Charges and Specifications.

Charge and specification preferred against Comrade.....
.....of.....Post, No.....,
Department of....., Grand Army of the Republic.

CHARGE..... (*Here insert the charge.*)
.....

Specification.—In this that the said Comrade.....
..... (*Here specify what he did.*) .....
.....

(*Here insert other specifications, or other charges and specifications, to cover the case.*)

All this at .....,
on or about the.....day of....., 18.....

By order of.....Post, No.....

.....,
Post Commander.

Notice to the Accused.

The Judge-Advocate shall give the accused at least ten days' notice of the time and place at which the court will sit for his trial, enclosing a copy of the charge and specification, and a list of the members of the court. The notice shall be in the following form:

....., 18.....

COMRADE.....

You are hereby notified that a Post court-martial, by order of.....
.....Post, No....., Department of.....
....., Grand Army of the Republic (*or of the Department Commander*), will convene for your trial upon the charge and specification preferred against you, at.....,
on....., 18....., at.....o'clock.....M.

I send you herewith a copy of the charge and specification, and a list of the members of the court.

You will please attend. Yours in F., C., and L.,

.....,
Judge-Advocate of the Court.

To this notice the charges and specifications shall be attached, and the following certificate of service on the accused made thereon:

I hereby certify that on the.....day of....., 18..., I delivered (or caused to be delivered) a true copy of the within notice, together with a copy of the charges and specifications and a list of the members of the court, to Comrade .....

.....,
Judge-Advocate of the Court.

In case the accused cannot be found, service may be made by leaving a copy at his usual or last-known place of residence; in which case the certificate should so state. Service may be made by the Judge-Advocate of the court or by any comrade designated by him.

Proceedings of the Court.

The court shall meet at the time and place appointed, and proceed as follows:

The Judge-Advocate shall call the roll of members of the court, and if a majority are present the court will be announced as open, and the accused admitted with his counsel (39). Should the accused not appear, the trial shall proceed in the same manner as if he were present. Should the court be

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1139 DECISION 8. W. W.

If an accused comrade desires to appear before a court-martial by counsel, he must select one who is a member of the Grand Army of the Republic.

The question in this case is, Can a comrade under charges appear and be defended before a court-martial by an attorney who is not a member of the Grand Army of the Republic?

cleared for deliberation at any time, no person can be present except the court and the Judge-Advocate.

The Judge-Advocate shall then rise and read aloud to the accused, if present, the order appointing the court, and then ask the accused if he has any objection to any member of the court named in the order, and record all objections in the proceedings. If no objections are presented, the trial will go on; but if objection is stated, the same shall be considered, after which the court will be cleared, the challenged member of the court retiring. After deliberation, the doors will be reopened, and the Judge-Advocate shall announce the decision of the court. If the objection made by the accused is sustained by the court, the challenged member cannot act in the case.

Note 1139 continued.

OPINION 8. J. B. J. 1889.

While the Rules and Regulations are silent on this subject, I am of opinion that both reason and policy are against it. I am aware that in the United States army the right of the accused to appear by such counsel as he may choose is recognized. But the conditions are entirely different. The Grand Army of the Republic is a secret organization, while the United States army is not. The Grand Army of the Republic, as such organization, has its secret obligations, signs, and passwords. Much of the work inside the Post-room can be known only by members of the Grand Army of the Republic. If a comrade is charged with violating his obligation, or with communicating the password or signs to persons not entitled to the same, in such a case it would be manifestly improper for him to be represented by an attorney not entitled to know the obligations, password, or signs, for the reason that the evidence at the trial would necessarily disclose them in order to determine the question whether or not the accused had committed the offence charged.

If, therefore, an accused could select as his attorney one not a member of the Grand Army of the Republic, a court-martial would be forced in many cases to commit to an outsider secrets to which he is not entitled, and more than that, secrets which every member of the court has obligated himself not to communicate, except to those entitled to the same. In many cases it would be difficult before the trial to determine just the extent to which the investigation would involve such secrets. But I am satisfied that the only safe rule to adopt is the one that prevents the accused from being represented in the court by an attorney not a member of the Grand Army of the Republic.

This rule cannot deprive the accused of any right to a proper and fair defence, since there are inside the ranks of the Grand Army of the Republic plenty of able and conscientious attorneys, ready to espouse the cause of a comrade in trouble. Whereas in many cases the rule would result in great benefit to him, as in a case where the accused should select an attorney not a comrade, and on the trial it should transpire that the most inviolate secrets of the Post came up for consideration and discussion, certainly but one course could be pursued. The court must at once exclude the attorney; thus depriving the accused of the preparation made by his counsel. He must then proceed without an attorney or procure one who is a member, and who must enter the case under great difficulties for lack of preparation.

Every consideration, therefore, constrains me to hold that if an accused comrade desires to appear before a court-martial by counsel, he must select one who is a member of the Grand Army of the Republic.

The President and other members of the court present shall then rise, and the Judge-Advocate shall administer to them, together, the following:

Obligation of the Court.

You, and each of you, do solemnly and sincerely declare and affirm, on honor as comrades of the Grand Army of the Republic, that you will well and truly try and determine, according to evidence, the matter now before you, that is to say, the charges and specifications preferred against Comrade....., of Post No....., Grand Army of the Republic, and that you will duly administer justice according to the Rules and Regulations of the Grand Army of the Republic, without partiality, favor, or affection; and, if any doubt shall arise not explained by said Rules and Regulations, according to your conscience, the best of your understanding, and the custom in like cases; and you, and each of you, do further declare and affirm that you will not divulge the sentence of the court until it shall be published by the proper authority; neither will you disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof in due course of law. So you, and each of you, do affirm.

The Judge-Advocate shall then rise and take the following obligation, which shall be administered to him by the President of the court:

You, Comrade....., Judge-Advocate of the court, do solemnly and sincerely declare and affirm, on your honor as a comrade of the Grand Army of the Republic, that you will not disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof, as a witness by a court of justice, in due course of law, nor divulge the sentence of the court to any but the proper authority until it shall be duly disclosed by the same. So you do affirm.

The Judge-Advocate shall then arraign the accused, if present, reading aloud to him the charge and specification, and at the close shall say,—

How say you, Comrade....., guilty or not guilty?

Plea.

Whereupon the *plea* of the accused shall be taken and recorded to *each specification*, as well as to the *charge*. If the accused is absent, a plea of "not guilty" shall be entered. If the accused is not present, but has been duly notified, the record should so state, showing the time and manner in which the service was made.

The Judge-Advocate shall then call the first witness for the prosecution, and administer to him, and to every witness, the following:

Obligation of Witnesses.

You, Comrade....., do solemnly and sincerely declare and affirm, on your honor as a comrade of the Grand Army of the Republic, that the evidence you shall give in the cause now in hearing, in the trial of Comrade....., shall be the truth, the whole truth, and nothing but the truth (40).

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113 [40] If the witness is not a member of the Grand Army of the Republic, the obligation should be administered on his or her honor as a man or woman.

Evidence.

The evidence of the witness shall then be taken and written by the Judge-Advocate in narrative form. All questions shall be reduced to writing and read to the witness, if they are proper questions and relevant to the case. Should any dispute arise as to the competency of evidence, or of any question propounded, the court shall be cleared for deliberation, and, on reopening, the decision shall be announced by the Judge-Advocate.

When all the witnesses for the prosecution have been examined, the accused shall enter upon his defence. If no counsel shall appear on behalf of the accused, the Judge-Advocate shall assist the accused, so far as he can, in presenting his defence and in shaping questions to his witnesses, but it shall also be the duty of the Judge-Advocate to cross-examine the witnesses for the defence, whether the accused be present or not. After the testimony on both sides has been closed, the Judge-Advocate may address the court, if he thinks proper, in support of the prosecution, and the accused, or his counsel, may address the court for the defence, the Judge-Advocate having the privilege of making the closing argument in the case. After which the court shall be cleared for deliberation.

Finding of the Court.

The findings of the court shall be by written vote upon *each specification* and *charge*. The votes shall be collected by the Judge-Advocate, and he shall announce the result to the court when counted, which shall be done in their presence. The conviction or acquittal of the accused shall be determined by a *majority* of the votes of the members of the court. The order in which the court shall vote shall be as follows: The court being ready to vote, the President so informs the Judge-Advocate, who then reads, in consecutive order, the specifications to the first charge, and then the first charge, and so on with the other charges and specifications, and the votes shall be taken, in succession, upon each specification and charge as it is read by the Judge-Advocate.

An equal division of the votes on any specification or charge shall result in a finding of *not guilty* as to that specification or charge.

Votes having been taken, and the findings recorded, upon each specification and charge, the finding thus declared is the decision of the court, and the sentence should then be pronounced in strict accordance with the charges and specifications of which the accused has been found *guilty*, and should be without regard to individual sympathies or opinions. This is required by the obligation assumed by each member of the court.

The voting on the grade of sentence to be imposed shall be conducted as follows: Taking that of the highest grade first, if a *majority* of the court present shall vote for the highest grade of punishment, it shall be recorded as the sentence of the court. All members of the court present must vote for

some proper sentence of the court, and if that which any member votes for is not adopted by a majority vote of those present, some punishment must be voted till a majority agree as to one punishment.

Every court-martial shall keep a complete and accurate record of its proceedings, to be authenticated by the signatures of the President and Judge-Advocate of the court, who shall also certify, in like manner, the sentence pronounced by the court.

The following form will serve to enable courts-martial to present a proper

Record of the Proceedings.

Proceedings of a Post (or General) court-martial, convened at....., in the County of....., Department of....., by virtue of the following order:

(*Here insert the order appointing the court.*)

HEAD-QUARTERS.....,

....., 18 .....

.....o'clock.....M.

The court met pursuant to the above order. Present:

Comrade....., *President.*

" ..... Comrade .....

" ..... " .....

" ..... " .....

" ..... " .....

Comrade....., *Judge Advocate.*

The accused, Comrade....., of Post No....., Department of....., Grand Army of the Republic, was present (or not present) (*and his counsel,* Comrade....., *if present*).

The Judge-Advocate, having read the order convening the court, asked the accused (if present) if he had any objection to any member named therein, to which he replied.

(*In the event of objection, state the name of the member objected to as follows:*)

The accused objected to Comrade....., and stated his cause of challenge as follows: (*Here insert the statement.*) Comrade ..... (the challenged member of the court) stated that....., etc.

The court was cleared, the challenged member retiring, and after due deliberation the doors were opened, the accused and challenged member present, and the decision of the court was announced by the Judge-Advocate: "That the challenge is sustained as sufficient," or "That the challenge is not sustained, being insufficient."

The members of the court then rose, and they each of them, in the presence of the accused, were duly affirmed and obligated by the Judge-Advocate,

and the Judge-Advocate was thereupon duly affirmed and obligated by the President of the court, in the presence of the accused. (*In cases of trial in the absence of the accused, that should appear and appropriate entry be made in the record.*)

The accused, Comrade....., of Post No....., Department of....., Grand Army of the Republic was arranged on the following

Charges and specifications, which were read aloud by the Judge-Advocate. (*Here insert them.*)

.....

To which the accused pleaded as follows: (*If the accused was not present the plea of not guilty shall be entered.*)

To the first specification of first charge.....

" second " " " .....

" *first charge*.....

" first specification of second charge.....

" second " " " .....

" *second charge*.....

Comrade....., of Post No....., Grand Army of the Republic, a witness on the part of the prosecution, was duly obligated. (*If the witness is not a comrade, so state.*)

Question by Judge-Advocate ..... (*Here insert question.*)

Answer..... (*Here insert answer.*)

(When the Judge-Advocate has finished his examination, the accused, or his counsel, may put questions, which shall be recorded thus:)

Question for defence.....

Answer.....

(When the cross-examination is completed, the court may put questions, which shall be recorded thus:)

Question by the court.....

Answer.....

(And so on with each witness for the prosecution.)

The prosecution here closed.

Comrade....., of Post No....., a witness on the part of the defence, was duly obligated.

Question for defence.....

Answer .....

Question by Judge-Advocate.....

Answer. .....

Question by the court.....

Answer .....

(*Should the court adjourn pending the proceedings.*)

The court then adjourned to meet again at.....o'clock.....M., on ....., 18...

On reassembling, the record proceeds.

.....o'clock.....M., ..., 18...

The court met, pursuant to adjournment. Present: Comrade..... *President*, Comrades..... (*here insert names of all members of court present*), and Comrade....., *Judge-Advocate.*

The accused.....was also present (*with his counsel*, ...).

The proceedings of the last session of the court of....., 18..., were presented to the court by the Judge-Advocate.

(*Here record additional proceedings.*)

The accused (or "the counsel for the accused") addressed the Court (or "read a statement") for the defence. (If in writing, it should be appended to the proceedings and marked.)

(*Here add the statement of the Judge-Advocate, or "the Judge-Advocate submitted the case to the court.*")

Finding.

The court was then cleared for deliberation, and having maturely considered the evidence adduced, find the accused, Comrade....., of..... Post, No....., Department of....., Grand Army of the Republic, as follows:

Of the first specification of first charge, "Guilty" (or "Not guilty," as the case may be).

Of the second specification of first charge, "Guilty" (or "Not guilty").

Of the first charge....., "Guilty" (or "Not guilty").

(*And so on with each specification and charge.*)

Sentence.

And the court do therefore sentence him, Comrade....., of .....Post, No....., Department of....., Grand Army of the Republic, that he be..... (*Here insert the sentence of the court.*)

(If a *suspension*, record it thus:)

.....suspended from membership in the Grand Army of the Republic, and from all rights and privileges thereof, for the period of ..... (*Insert the time.*)

(If a *dishonorable discharge*, record it thus:)

.....dishonorably discharged from the Grand Army of the Republic.

(Signed)

.....,
President of the Court.

.....,
Judge-Advocate.

Endorsement.

(*When the proceedings are forwarded to the Department Commander, endorse as follows:*)

Proceedings, findings, and sentence of the court-martial of Comrade ...., of Post No....., Department of....., Grand Army of the Republic.

Approved. Respectfully forwarded to....., Commander, Department of....., Grand Army of the Republic.

....., *Post Commander,*

....., Post No....., Grand Army of the Republic.

To.....,

Assistant-Adjutant-General.

This code of procedure for courts-martial is respectfully presented.

D. R. AUSTIN,
JOS. W. O'NEALL,
HENRY M. DUFFIELD,
Committee.

The foregoing code is approved by me this second day of March, A.D. 1891.

W. G. VEAZEY,
Commander-in-Chief.

Official:

J. H. GOULDING,
Adjutant-General.

RULES OF ORDER

FOR THE

NATIONAL ENCAMPMENT.

I. **Order of Business.**

1. Opening of the National Encampment in due form.

2. Calling roll of officers.

3. Report of Committee on Credentials.

4. Calling roll of members.

5. Reports of officers, beginning with that of the Commander-in-Chief.

6. Appointment of committees, to consist of five members each, as follows:

1st. Committee on Credentials for the following year, the Adjutant-General to be chairman.

2d. Committees on Reports of Officers.

3d. Committee on Rules and Regulations and Ritual.

7. Reception and reference of communications from Department Encampments, to be called according to seniority.

8. Reception and reference of communications from individuals.

9. Reports of committees.

10. Unfinished business.

11. New business.

12. Election and installation of officers.

13. At the second and each succeeding session the minutes of the preceding session shall be read immediately after the opening ceremonies. This shall also be done before the closing exercises of the last session.

14. This order of business may be suspended at any time for a definite purpose by a two-thirds vote of the National Encampment, to be taken without debate.

II. The Commander-in-Chief shall state every question prop-

erly presented to the National Encampment, and before putting it to vote shall ask, "Is the Encampment ready for the question?" Should no member offer to speak, he shall rise to put the question, and after he has risen no further discussion shall be in order.

III. The Commander-in-Chief may speak to points of order in preference to other members, rising for that purpose; he shall announce all votes and decisions, and decide questions of order, subject to an appeal to the National Encampment by any two members, which appeal, if required, shall be in writing.

IV. When an appeal is taken from the decision of the presiding officer, said officer shall surrender the chair to the officer next in rank, who shall put the question thus: "Shall the decision of the chair stand as the judgment of the National Encampment?"

V. When the decision of any vote is doubted, the Commander-in-Chief shall direct the Adjutant-General to count the vote in the affirmative and negative, and report the result to him.

VI. When two or more members rise to speak at the same time, the Commander-in-Chief will decide which is entitled to the floor.

VII. A motion must be seconded and stated by the Commander-in-Chief before any action thereon is in order, and if required by any two members, shall be reduced to writing.

VIII. A motion may be withdrawn by the mover and seconder before a vote is had thereon, and if withdrawn, no record thereof shall be made on the minutes.

IX. The name of a member making a motion or offering any business shall be entered on the minutes.

X. A division of a question containing two or more distinct propositions may be demanded by any member.

XI. When a member wishes to speak, he shall rise and respectfully address the Commander-in-Chief, confining his remarks to the question before the National Encampment, and avoiding personalities and unbecoming language.

XII. No member shall be interrupted while speaking, except by a call to order or by a member to explain.

XIII. No member shall speak more than twice upon the same question, except for explanation when misrepresented, nor longer

than ten minutes at any time, without a vote of the National Encampment, to be taken without debate.

XIV. No member shall in debate impeach the motives of a fellow-member, treat him with personal disrespect, or pass between him and the chair while he is speaking.

XV. Any conversation calculated to disturb a member while speaking, or to hinder the transaction of business, shall be deemed a violation of order, and, if persisted in, shall incur censure.

XVI. On questions of order there shall be no debate, unless the Commander-in-Chief shall invite it, or unless an appeal is taken.

XVII. When a member is called to order, he shall at once take his seat until his point of order is decided.

XVIII. When a member is called to order for words spoken in debate, the objectionable words shall, if required, be reduced to writing.

XIX. When a question is before the National Encampment, the only motions in order shall be:

1st. To adjourn.
2d. To lay on the table.
3d. The previous question.
4th. To postpone indefinitely.
5th. To postpone to a definite period.
6th. To postpone.
7th. To refer.
8th. To amend.

To take precedence in the order named, and the first three to be decided without debate.

XX. When the previous question is moved and seconded, it shall preclude all other motions and debate. It shall be put in this form: "Shall the main question be now put?" If decided in the affirmative, the vote shall be at once taken without debate, and in the same order as if the previous question had not been ordered.

XXI. A motion to adjourn shall always be in order, except:

1st. While a member is speaking.
2d. While a vote is being taken.
3d. When to adjourn was the last preceding motion.

A motion to adjourn cannot be amended, but when to adjourn to a given time or place, it is open to amendment or debate.

XXII. The reading of any paper relating to the subject under consideration shall always be in order.

XXIII. When a blank is to be filled, the question shall be first taken upon the highest sum or number, or longest time, or in the order of nomination, if it is to be filled with the name of a person.

XXIV. The yeas and nays may be required and entered upon the minutes at the call of any three members representing different Departments, as provided in Chapter 4, Article 7, Rules and Regulations.

XXV. When a matter is postponed indefinitely, it shall not again be in order at the same session of the National Encampment.

XXVI. But two amendments can be pending at the same time.

XXVII. A motion to reconsider shall be in order at any time during the same session of the National Encampment, but must be made by those voting with the majority, or those voting in the negative in the case of equal division. A motion to reconsider once made and negatived shall not be renewed at the same session.

XXVIII. All reports and resolutions must be submitted in writing, and when from a committee they must be signed by a majority of such committee.

XXIX. All members entitled to vote shall vote on all questions, unless excused by a vote of the National Encampment, to be taken without debate.

XXX. When a majority report is followed by a report from the minority of a committee, the former, after being read, shall lie upon the table until the latter is presented, after which, on motion, either may be considered.

XXXI. When a report has been read it shall be considered properly before the National Encampment without any motion to accept.

XXXII. When a report is submitted with a resolution attached, action shall be had on the resolution only, unless the report be considered improper or incomplete, when it may be recommitted.

When no resolution accompanies the report, such report may be altered or amended.

XXXIII. No report or resolution properly before the National Encampment shall be withdrawn without its permission, to be given or refused without debate.

XXXIV. Questions not debatable:

1st. To adjourn, when to adjourn simply.
2d. To lay on the table.
3d. For the previous question.
4th. To take up any particular item of business.
5th. Granting leave to speak.
6th. Granting leave to withdraw a report or resolution.
7th. To excuse from voting.
8th. Questions of order, where no appeal has been taken, or where the Commander-in-Chief has not invited discussion.

XXXV. These Rules of Order may be altered or amended at any regular session of the National Encampment, upon proposition in writing, and by a two-thirds vote of those present and voting.

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AND

SYLLABUS OF OPINIONS.

REVISED EDITION, 1891.

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